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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 33

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, PETITIONER,

vs.

BENNO BARTELS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 13, 1939.

CERTIORARI GRANTED APRIL 24, 1939.

SUPREME COURT OF THE UNITED STATES

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INDEX.

	Page
Record from D. C. U. S., Western District of Texas	1
Caption	1
Order approving petition as properly filed and referring case to Conciliation Commissioner	2
Report of Conciliation Commissioner	3
Application to be adjudged a bankrupt under Subsection S of Section 75, Farm Relief Act	4
Adjudication on amended petition	6
Motion to set aside order of adjudication of bankruptcy and dismiss debtor's petition	7
Reply of the bankrupt to the motion of John Hancock Mutual Life Insurance Company to vacate the order of adjudication	11
Stenographic report of a hearing had before the Honorable Alvin P. Mueller, Conciliation Commissioner, Guadalupe County, Texas, December 21, 1937	15
Caption and appearances	15
Testimony of Benno Bartels	16
Colloquy	65
Reporter's certificate	67
Index to narrative statement of evidence	69

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—2672

	Page
Record from D. C. U. S., Western District of Texas—Continued.	
Narrative statement of evidence	70
Order setting aside adjudication in bankruptcy and dismissing debtor's petition for composition and extension	98
Oral opinion of the court, McMillan, J.	99
Petition for appeal	108
Assignments of error	109
Order allowing appeal	111
Appeal bond	112
Waiver of issuance and service of citation	114
Praecipe for record on appeal	115
Clerk's certificate	117
Proceedings in U. S. C. C. A., Fifth Circuit	118
Argument and submission	118
Opinion of the court, Sibley, J.	118
Judgment	124
Petition of appellee, John Hancock Mutual Life Insurance Company for rehearing	125
Dissenting opinion of Honorable Edwin R. Holmes, Circuit Judge, to denial of petition for rehearing	133
Order denying rehearing	138
Clerk's certificate	139
Order allowing certiorari	139

CAPTION.

BE IT REMEMBERED, That at a regular term of the United States District Court in and for the Western District of Texas, the Honorable Robert J. McMillan, United States District Judge, presiding, and holding its sessions at San Antonio, Texas, which said term began on the 20th day of December, A. D. 1937, and continued to and included the 5th day of April, A. D. 1938, there came on to be heard and determined

> The Motion of John Hancock Mutual Life Insurance Company, a creditor, to set aside adjudication of bankruptcy and to dismiss Debtor's petition for composition and extension,

in

Cause No. 1988 In Bankruptcy,
In the Matter of Benno Bartels, Debtor.

ORDER APPROVING PETITION AS PROPERLY FILED AND REFERRING CASE TO CONCILIATION COMMISSIONER.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION.

In the Matter of Benno Bartels, Debtor.
No. 1988 Bankruptcy,
(In Proceedings for Composition or Extension).

The petition of Benno Bartels, of Guadalupe Coun Texas, filed at San Antonio, Texas, in said District, on t 2nd day of December A. D. 1937, praying that he be a forded an opportunity to effect a composition or extensi... of time to pay his debts under Section 75 of the Bankruptcy Act, as amended, having been heard and duly considered, is hereby approved as properly filed under said Section, a n d

It is ORDERED that said matter be referred to Alvin P. Mueller Esquire, one of the Conciliation Commissioners of this Court, to take such further proceedings therein as are required by said Section; and that the said Benno Bartels shall attend before said Conciliation Commissioner on the 22nd day of December, A. D. 1937, at Seguin, Texas, and thenceforth shall submit to such orders as may be made by said Conciliation Commissioner or by this Court relating to the proceedings under said Section.

The Clerk will enter this order of record at the San Antonio Division of the Court.

Done at San Antonio, Texas, this the 2nd day of December, A. D. 1937.

ROBERT J. McMILLAN
United States District Judge.

ENTERED: Bankruptcy Volume 3, page 487.
Filed: December 2nd, 1937.

REPORT OF CONCILIATION COMMISSIONER.

(Title Omitted).

On this December 21, 1937, at 10 A. M. a meeting was held by the Creditors in the above numbered and styled cause, pursuant to notices thereof duly mailed to the creditors and to the debtor. There were present at said meeting the debtors, BENNO BARTEL, and the following creditors, representing the following amounts of indebtedness:

1. John Hancock Mutual Life Insurance Company of Boston, Massachusetts, who file a claim for their debt secured by a lien upon the home of Petitioner, aggregating with interest and attorney's fees $8,013.43
2. Mrs. Bertha Kraft, who holds a note for $ 900.00
3. Mrs. Louisa Sauer, who holds a note for $ 500.00
4. The creditor, Robert Meyer, who holds a note for $ 700.00

was not present.

A detailed examination was made of the debtor's financial condition and after discussions, the said debtor proposed to sell personal property valued at approximately $250.00 and also sell a lot which he owns situated in San Antonio, Texas, and apply the proceeds thereof to liquidate part of the delinquencies, to the John Hancock Mutual Life Insurance Company. At the same time the debtor proposed to fully pay all delinquencies remaining unpaid to said John Hancock Mutual Life Insurance Company within three (3) years, but the said insurance Company declined to accept such proposition. The debtor made an agreement with Mrs. Kraft and Mrs. Sauer for an extension of their debts but was unable to obtain an agreement with a majority of the creditors in number and amount.

The John Hancock Mutual Life Insurance Company proposed to wait on its unmatured principal, provided all delinquencies were paid. The debtor stated that he was unable to do this. Thereafter the debtor notified the commissioner that he would make application to be adjudged a bankrupt under sub-section S of section 75 of the Fraiser-Lemke Farm Relief Act.

ALVIN P. MUELLER
Conciliation Commissioner, Guadalupe County, Texas.

Filed 10th day of Jan. 1938.

APPLICATION TO BE ADJUDGED A BANKRUPT UNDER SUBSECTION S OF SECTION 75, FARM RELIEF ACT.

(Title Omitted).

In the above numbered and styled cause, comes now BENNO BARTELS and respectfully shows to the Court that heretofore on December 21, 1937, the Conciliation Commissioner for Guadalupe County held a meeting as required by law, at which meeting the following creditors were present:

1. John Hancock Mutual Life Insurance Company of Boston, Massachusetts, who file a claim for their debt secured by a lien upon the home of Petitioner, aggregating with interest and attorney's fees $8,013.43
2. Mrs. Bertha Kraft, who holds a note for ..... $ 900.00
3. Mrs. Louisa Sauer, who holds a note for ..... $ 500.00
4. The creditor, Robert Meyer who holds a note for ..... $ 700.00

was not present.

The above represent all of the creditors and debts aside from $28.20 owing as taxes.

This Petitioner would state that at such meeting, he was able to procure an extension from the creditors, Mrs. Bertha Kraft and Mrs. Louisa Sauer but that he was unable to reach any kind of agreement with the creditor, John Hancock Mutual Life Insurance Company. This Petitioner proposed to dispose of certain of his personal properties and apply same on the debt of the John Hancock Mutual Life Insurance Company, but he was advised that same was insufficient to cover the delinquencies and, hence same was rejected by said insurance Company. In view of the fact that the said insurance company is by far the largest creditor, this petitioner is unable to submit an agreement consented to by a majority of the creditors in number and amount as required by law.

This petitioner would therefore show to the Court that he desires to be adjudged a Bankrupt in pursuance to and under the provisions of sub-section S of Section 75 of the Fraiser-Lemke Farm Relief Act and here now asks that his property be appraised and that his exemption be set aside to him as required by law in order to comply with said sub-section S of Section 75 and that he be permitted to retain possession of his property under the supervision of the Court.

This Petitioner, therefore, files this his amended petition asking that he be adjudged a Bankrupt in pursuance of said law and that this Court enter such orders as he may be justified and entitled to in order to permit this petitioner to take advantage of the privileges given him according to and by virtue of the aforementioned law.

In this connection, Petitioner would show that he did heretofore on December 2, 1937, file his schedules of assets

and liabilities which he here now asks to be made a part of this petition.

BENNO BARTELS Petitioner.-

I, Benno Bartels, the petitioner above mentioned, do hereby make solemn oath that the statements contained herein are true and correct to the best of my knowledge, information and belief.

BENNO BARTELS Petitioner.-

Subscribed and sworn to before me this 4th day of January, A. D. 1938.

ELBERT JANDT

(Seal) Notary Public, Guadalupe County, Texas.-

Filed 10th day of Jan. 1938.

ADJUDICATION ON AMENDED PETITION

(Title Omitted).

This matter coming on to be heard upon the amended petition of Benno Bartels, that he be adjudged a bankrupt, as provided by Section 75, sub-section (s) of the Bankruptcy Act, and the same having been heard and considered, and it appearing to the court that the said request should be granted;

It is ordered that the said Benno Bartels be, and he is hereby, declared and adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, and that further proceedings be had before Alvin P. Mueller, the Conciliation Commissioner for the County of Guadalupe, who shall henceforth act herein as

a referee, as provided by sub-section (s), Section 75 of said Act.

The Clerk will duly enter this order of record at the San Antonio Division of the Court and provide the Conciliation Commissioner with a copy hereof for his information and observance.

Ordered at San Antonio, Texas, this the 10th day of January A. D. 1938.

ROBERT J. McMILLAN
United States District Judge.

ENTERED: Bankruptcy Volume 3, page 499.

Filed: Jan. 10, 1938.

MOTION TO SET ASIDE ORDER OF ADJUDICATION OF BANKRUPTCY AND DISMISS DEBTOR'S PETITION.

(Title Omitted).

TO THE HONORABLE ROBERT J. McMILLAN, UNITED STATES DISTRICT JUDGE:

Now comes John Hancock Mutual Life Insurance Company, a corporation, of Boston, Massachusetts, a creditor of the above named debtor, Benno Bartels, and files this its motion to set aside the order of adjudication of bankruptcy, heretofore made in the above numbered and entitled matter, and to dismiss the debtor's petition in this proceeding, and, as grounds for this motion, respectfully represents to the court:

1. That the debtor, Benno Bartels, was, at the time of the filing of his petition and schedules in this proceeding and still is indebted to John Hancock Mutual Life Insurance Company in the aggregate sum of $8,195.37, representing principal and interest, and attorney's fees calculated up to March 23, 1938; that the consideration for said indebtedness was a loan in the original principal sum of $6,000.00, made to Martin Kroesche on June 24, 1926, the payment of which indebtedness was and is secured by a first and superior deed of trust lien upon 100 acres of land situated in Guadalupe County, Texas, and described in a deed of trust, dated June 24, 1926, recorded in Volume "Z", page 560, Deed of Trust Records of Guadalupe County, Texas; that the debtor, Benno Bartels, long prior to the filing of his petition in this matter, had purchased said tract of 100 acres of land, and, as a part of the consideration for the purchase of said land, he expressly assumed the payment of the indebtedness held by John Hancock Mutual Life Insurance Company.

2. That the interest upon said indebtedness is now delinquent for more than three years, as shown by the following tabulation showing the calculation of the indebtedness up to March 23, 1938, all as more fully shown by the proof of claim filed in this proceeding by John Hancock Mutual Life Insurance Company.

Principal of loan	$6,000.00.
Balance of interest due 1/1/35	$ 45.93.
Interest on Interest to 3/23/38	$ 9.63.
Interest due 1/1/36	$ 390.00.
Interest on Interest	$ 56.27.
Interest due 1/1/37	$ 390.00.

Interest on Interest	$ 30.92.
Accrued Interest	$ 475.59.
	$7,398.34.
Special mortgage advancement	$ 52.00.
	$7,450.34.
Attorney's fees	$ 745.03.
	$8,195.37.

3. That, heretofore, on December 21, 1937, the first meeting of creditors of the petitioning debtor, Benno Bartels, was held before Hon. Alvin P. Mueller, Conciliation Commissioner of Guadalupe County, Texas; and that a stenographic transcript of the proceedings of said first meeting of creditors is on file in this proceeding, and your applicant makes reference to said stenographic transcript in support of this motion.

4. That, on or about January 10, 1938, without any character of notice to your applicant or to other creditors, so far as your applicant is informed, there was made and entered in this proceeding an order adjudicating the said debtor, Benno Bartels, a bankrupt under the provisions of Sub-section (s), of Section 75, of the Bankruptcy Act, as amended; that said order of adjudication was, under all the facts and circumstances, erroneously made, because the debtor, Benno Bartels, under the law and the facts, was not entitled to avail himself of the provisions of said Sub-section (s), and the effect of the granting of said order of adjudication was and is merely to prolong the debtor's proceeding at a great loss and detriment to your applicant, as a creditor.

5. That the petitioning debtor, Benno Bartels, as shown by the record of the proceedings at the first meeting of

creditors, during the past four years, has not properly farmed said 100 acres of land, by reason whereof the rents and revenues therefrom have been insufficient to pay the interest and taxes accumulating over a period of four years.

6. That the petitioning debtor has not presented and can not present, as your petitioner believes, any feasible or acceptable plan for a composition and extension of his debts; and your applicant avers that the debtor's petition in this proceeding was not filed in good faith or with any hope or expectation of working out his debts and paying up his delinquencies but apparently for the sole purpose of hindering and delaying his creditors.

7. That the Honorable Alvin P. Mueller, Conciliation Commissioner of Guadalupe County, Texas, has heretofore filed herein his report of the first meeting of creditors of the debtor; and, as shown by said report, the debtor is wholly unable to offer any acceptable proposal for an extension of his debts.

8. That this court and the Conciliation Commissioner are without jurisdiction in this matter, because the debtor, Benno Bartels, was not, at the time of the filing of this petition for composition and extension, a farmer within the meaning and intent of Section 75 of the Bankruptcy Act as amended.

9. That the fair and reasonable market value of the real estate held by your applicant as security for the indebtedness hereinabove shown is such that there exists no equity therein for the debtor or any of his other creditors; that the value of said real estate is such that your applicant will suffer a substantial loss upon its debt when said real estate is subjected to the payment of said indebtedness; and that, unless the court shall set aside the order adjudicating the debtor a bankrupt and forthwith dismiss the

debtor's petition and all proceedings thereunder, this applicant will suffer great and irreparable loss.

WHEREFORE, your applicant prays that this motion be set down for hearing after due notice, and that, upon such hearing, the court enter an order herein setting aside the order of adjudication in bankruptcy heretofore made in this proceeding, and that the debtor's petition for composition and extention and all proceedings thereunder be dismissed.

HENRY, BICKETT & BICKETT
Attorneys for John Hancock Mutual
Life Insurance Company.

Filed 23rd day of March, 1938.

REPLY OF THE BANKRUPT TO THE MOTION OF JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY TO VACATE THE ORDER OF ADJUDICATION,

(Title Omitted).

TO THE HONORABLE ROBERT J. McMILLAN, UNITED STATES DISTRICT JUDGE:

Comes now the Bankrupt, Benno Bartels, in the above styled and numbered cause, and files this his Reply to the Motion of the creditor John Hancock Mutual Life Insurance Company to set aside the Order of Adjudication of Bankruptcy, and for such reply respectfully represents to the Court:

I.

Your Bankrupt excepts to said creditor's Motion, for the reason that same wholly fails to set forth facts sufficient in law or in equity to entitle it to the relief sought; and of this general demurrer, he prays judgment of the Court.

II.

Further answering, your Bankrupt denies all and singular the allegations contained in said Motion, save and except such allegations as may have been admitted in his Original Petition to be adjudged a bankrupt, or such as may be hereinafter admitted, and demands strict proof thereof.

III.

Further answering, your Bankrupt specially denies that the adjudication in bankruptcy will merely prolong the debtor's proceeding at great loss and detriment to the said named creditor.

IV.

Your Bankrupt denies that he has not properly farmed the 100 acres of land described in said creditor's Motion during the past four years, and would respectfully show in this connection that whereas, it is true that he has not personally farmed said property until this year during the past four years, that he has farmed same through the system known as the half renter system, whereby the said Bankrupt furnished all seeds, materials, machinery and animals for farming said land, and directed and supervised the farming thereof, paying to the Mexicans who actually did the labor one-half of the costs. That he so farmed said property during that time because of ill health, and the fact that the crops were not better than they were is due

partly to the fact that the Bankrupt was himself unable to farm same during said period of time, and likewise due to adverse weather conditions and adverse insect conditions, but that now your Bankrupt has recuperated sufficiently to personally farm said land, and that he is a first class farmer; that he has purchased a tractor and he is personally farming said land with said tractor and has same in excellent shape for this year, with excellent prospects of a good crop thereon.

V.

Your Bankrupt specially denies that he has not presented a feasible plan for a composition and extension of his debts, and in this connection would respectfully show that with his assets, as shown in his Schedule of Assets, and farming the property himself as he is doing and will do, that during the next three years he will be able to pay off all back interest due this petitioning creditor, together with all current interest thereon and charges, and have his loan in a current shape, and will in said three year period be able to refinance said loan and pay off said creditor in full. That the land on which said creditor has a lien unimproved is worth in excess of $7000.00, and that the improvements thereon are worth conservatively $6000.00, making a total value of said property securing said creditor in excess of $13,000.00. That he has a large equity in said property which will be lost to him unless he be given the benefits of Sub-Section (s) of Section 75 of the Bankruptcy Act, and that he has applied for relief under said Sub-section in good faith, with not only every hope of working out his debts and paying up his delinquencies, but with a reasonable expectation thereof.

VI.

Your Bankrupt further specially denies that he is not a farmer under the meaning of Section 75 of the Bankruptcy Act; and in this connection would respectfully show that practically his entire work and life have been devoted to farming, and at the time he filed his petition he was actually engaged in farming the land upon which the moving creditor has a lien.

VII.

Your Bankrupt further specially denies that the petitioning creditor will suffer great and irreparable loss unless the Order of this Court adjudicating the debtor a bankrupt be set aside; and in this connection, would respectfully show that your Bankrupt is diligently farming the security held by said creditor in a good and workmanlike manner. That he will deliver the proceeds of the crops over and above his expenses and equal to or in excess of the landlord's share of such crops, to the payment of the said creditor's debt, and that no tenant whom the creditor might place upon said farm could or would produce greater revenue thereon for said creditor than will this Bankrupt, and that said creditor is fully protected from any damage or loss by reason of said adjudication in bankruptcy.

WHEREFORE, your Bankrupt prays that the Motion of John Hancock Mutual Life Insurance Company to set aside the order of adjudication in bankruptcy heretofore made, and to dismiss the proceedings thereunder, be in all things denied.

D. E. MOSHEIM

Attorneys for Bankrupt.

Filed April 5, 1938.

STENOGRAPHIC REPORT OF A HEARING HAD BEFORE THE HONORABLE ALVIN P. MUELLER, CONCILIATION COMMISSIONER, GUADALUPE COUNTY, TEXAS, December 21, 1937.

(Title Omitted).

At Seguin, Guadalupe County, Texas, in said district, on the 21st day of December, A. D., 1937, at 10:00 o'clock a. m., before the Honorable Alvin P. Miller, Conciliation Commissioner for Guadalupe County, Texas, the above numbered and entitled cause came on for hearing, whereupon the following proceedings were had:

APPEARANCES:

L. M. Bickett, Esquire, appearing for the creditor, John Hancock Mutual Life Insurance Company;

Mr. R. F. Leslie, representative for John Hancock Mutual Life Insurance Company;

Mrs. Bertha Kraft, appearing for herself; and

Mrs. Louisa Sauer, appearing for herself; and

Mr. Benno Bartels, the debtor.

MR. BICKETT: Before we start, Mr. Miller, we will let it be understood that Mr. Persinger is sworn as reporter for these proceedings.

THE COMMISSIONER: All right.

This is the first meeting of the creditors in the conciliation case of Mr. Benno Bartels. I would like to have the record show those who are present.

The creditors mentioned in the petition are John Hancock Mutual Life Insurance Company.

MR. BICKETT: L. M. Bickett is present representing the John Hancock Mutual Life Insurance Company, as is also Mr. R. F. Leslie.

THE COMMISSIONER: Mrs. Bertha Kraft and Mrs. Louisa Sauer are present. Mr. Robert Meyers is not here. Those are the only creditors mentioned. Of course, Mr. Bartels is present.

Mr. Bickett, do you want to ask the applicant any questions or interrogate him?

MR. BICKETT: Yes, sir. I think Mr. Bartels should be sworn in the usual way at this time.

BENNO BARTELS, debtor, being first duly sworn, testified as follows:

EXAMINATION

By Mr. Bickett:

Q Your name is Benno Bartels?

A Yes, sir.

Q Are you represented by an attorney in these debtor proceedings?

A Mr. Miller here.

Q You don't have an attorney aside from the Conciliation Commissioner? I say you don't have an attorney aside from Mr. Miller?

A No.

Q Where are you living at this time, Mr. Bartels?

A What is it?

Q Where are you living at this time?

A I am living on the farm there.

Q On the tract of 100 acres of land in Guadalupe County?

A Yes, sir.

Q You also operate a store, don't you?

A I used to, but not now any more.

Q You don't have a store now?

A No, sir.

Q Where was the store?

A How?

Q Where was the store?

A The store, it was across just opposite from the farm.

Q Suppose you move your chair around this way, Mr. Bartels, and maybe you will hear better. Sit right there then the reporter can hear you. Now, up to a very short time ago you have been running a store?

A In partnership, yes.

Q Who with?

A With Gilbert Kroesch.

Q Give the reporter that name so he will get it.

A Gilbert Kroesch.

MR. LESLIE: Gilbert Kroesch, K-r-o-e-s-c-h.

Q Mr. Bartels, speak out a little bit louder so we can all hear you, and so the reporter can hear you.

You still have an interest with Mr. Kroesch in the store business?

A Well, how do you mean? I don't know. I sold the interest out. I ain't got no more store.

Q Who did you sell to?

A Kneupper.

Q What is his first name?

A Edgar.

MR. LESLIE: When did you sell?

A About two weeks or three weeks ago.

Q (by Mr. Bickett) What did you get for your interest?

A I haven't got it yet, we have got to take stock first.

Q What is the agreed price that you are selling for?

A I can't tell you that just now.

Q You don't know how much money you are going to get for it, what the agreement is?

A Not yet, we have got to take stock first.

Q What is your deal, what is the nature of your sale?

A He said he was going to take the stock and he was going to pay for it.

Q Is he going to pay you one half the value of the stock?

A One half? I don't know; I think he ought to pay a little more.

MR. LESLIE: He means that you just own one half interest. Is Kneupper going to buy out the other man too?

A Sure, we have an interest there.

Q (by Mr. Bickett) Approximately how much are you going to get out of the store business?

A I can't tell.

Q Estimate it. Can't you give me a rough estimate; is it $500.00, $1,000.00, $1,500.00, how much money approximately??

A You mean my part?

Q Yes, sir.

A About $250.00, something like that.

Q You don't think it will be any more than $250.00?

A No, sir.

Q When do you expect to get that money?

A Just as soon as—about the first or a little after the first of January.

Q Within the next week or ten days?

A Yes.

Q Is the store owing any debts?

A No.

Q So that money will come to you clear and free of any claims or debts, will it?

A Yes, sir.

Q What do you propose to do with the money, Mr. Bartels?

A Pay it, pay off the debts what I owe.

Q Apply it on your debts?

A Yes, sir.

Q Would you be willing to apply that to the insurance company's debt on that land?

A Sure.

Q Have you promised to pay any of it to anybody else?

A Not exactly, but I would like to pay everybody a little bit, everybody.

Q You bought that tract of 100 acres from Mr. Kroesch, didn't you?

A Yes, sir.

Q When did you buy it?

A 1925, I think it was, I am not sure.

Q Did you assume the debt on that which was held by the insurance company?

A Yes, sir.

Q The principal of that debt is $6,000.00?

A Yes, sir.

Q Mr. Bartels, there was a balance of about $45.00 interest due, in fact it became due about January 1, 1935, is that about right?

A Yes, about.

Q Then you owe interest which was due January 1, 1936, $390.00, that is January 1, 1936?

A Yes.

Q Then you owe interest due January 1, 1937, $390.00, that is correct?

A Yes.

Q Then there will be interest, $390.00, due January 1, 1938, that is right, isn't it?

A 1938?

Q Yes.

A Yes.

Q That means that you owe more than three years back interest, doesn't it?

A I don't know.

Q You will owe another installment of interest on January 1, 1938?

A If you figure the interest in advance, yes.

MR. LESLIE: It is not in advance; it is at the end of the year.

Q (by Mr. Bickett) It is the end of the year, due in January?

A January?

Q January 1, 1938, or at the end of this year you will owe another installment?

A I will answer yes, but not at the beginning.

Q But the interest is due on January 1, each year, that is the interest for the preceding year?

A Yes, the preceding year's, sure.

Q How much taxes do you owe, Mr. Bartels?

A I don't owe any.

Q Are your taxes all paid up?

A Paid so far.

Q They are not paid for 1937, are they?

A No, not yet.

Q They are paid for 1936?

A I paid all the rest of it, yes, sir.

Q On January 1, you will owe more than three years back interest, won't you?

A If you figure in 1938.

Q I am not counting the year 1938, but for the year 1937 and the accrued interest which comes due January 1, 1938, that is right?

A (No audible response made by the witness.)

MR. LESLIE: It is actually due December 31, payable January 1; in other words, it is payable at the end of the year. They don't charge you interest except at the end of the year.

A You have got 1938 figured in there.

MR. BICKETT: No, I will show you. You owed a balance of $45.93 interest that was due January 1, 1935, that is right?

A Yes, sir.

THE COMMISSIONER: That is for the year 1934, is it not?

MR. BICKETT: For the year 1934.

MR. LESLIE: That is right.

Q (by Mr. Bickett) I am asking you, Mr. Bartels. Just answer so we will get it into the record.

A Yes, sir.

Q On January 1, 1936 you owed $390.00, which was interest for 1935, payable on the first of 1936, that is right, isn't it?

A Yes.

Q On January 1, 1937 you owed another $390.00, which was the installment due at the end of December, 1936, that is right?

A Yes, sir.

Q Now within a few days, January 1, 1938, you will owe interest that has accrued for 1937, $390.00; that is right, isn't it?

A 1937, no.

Q You haven't paid the 1937 interest?

A No, but you have got 1938 figured in there.

Q No, you are wrong about that.

A Maybe so.

Q I want you to answer now. You owe interest that was due January 1, 1937, don't you?

A Yes.

Q Now when January 1, 1938 comes you will owe another installment, won't you?

A Sure, but not for 1938.

Q No, for the year 1937.

MR. LESLIE: The 1938 interest won't be payable until 1939.

Q (by Mr. Bickett) You have never paid interest in advance, have you?

A No, but it is figured in there.

Q You are wrong about that. I will go over it again.

THE COMMISSIONER: Mr. Bickett, pardon me, I suggest instead of saying January 1, that you just describe it by the year for which it is due.

Q (by Mr. Bickett) Going back over it, I think we can make it clearer to you this way. You owed a balance of $45.93 interest for the year 1934, don't you?

A 1935.

Q I am talking about the interest that was not paid on the first of 1935, the interest which accrued during 1934. You owe a balance on that, don't you?

MR. LESLIE: If you will permit me to ask a question of Mr. Bartels?

MR. BICKETT: Go ahead.

Questions by Mr. Leslie:

Q Mr. Bartels, when you took that place over on the first day of January did you pay any interest on the day you took it over?

A No, sir.

Q You did not. Let us take Kroesch. Mr. Kroesch operated the place—you bought the place on January 1, 1935, I don't know what year, but he did not pay any interest when you bought that place?

A They took it right off.

Q No, they didn't take it off; you are wrong.

MR. BICKETT: There is no use arguing with Mr. Bartels. We have filed a claim here which speaks for itself.

Questions by Mr. Bickett:

Q You have never paid interest in advance, have you, for any given year?

A I have never done that, no, sir.

Q You paid it at the end of the year for that particular year?

A Yes, sir, but if you want the interest in advance—

Q No, I am not asking you that. I am asking you a question; you just answer my questions. At the end of 1937 you will owe another installment of interest, won't you?

A Yes, sir.

Q What is the condition of that land with respect to being in cultivation or not during this past crop year?

A How do you mean?

Q What is the condition, is it all in cultivation or not?

A Not all; I have some leased with the government.

Q How much was in cultivation, has actually been cultivated, give us the approximate acreage?

A About 85 acres.

Q 85 acres in cultivation?

A Yes.

Q What kind of crop is planted on that?

A Corn and cotton.

Q How much cotton did you make?

A Five bales, I think.

Q Five bales?

A Yes, sir.

Q How much money did you get for it?

A I don't know exactly; I didn't figure that out.

Q Approximately how much? How did you farm it, on the shares?

A I had it on the halves, but I am going to farm it myself now from now on.

Q I am talking about this past year. You farmed it on the halves?

A Yes, sir.

Q How much did you get out of the cotton?

A Well, about—a little over $100.00 for my part.

Q Your part was a little over $100.00 from the cotton. How much did you get from the corn?

A I haven't sold the corn yet; I have still got the corn.

Q How much corn have you got, how many bushels for your part?

A I don't know exactly.

Q Well, approximately.

A Well, say about 150 bushels.

Q How much is that a bushel?

A About fifty cents, I think.

Q That is about $75.00 worth of corn that you have got for your share?

A Yes, sir.

Q Now, did you get any other moneys or crops from this property for 1937, that is, this year?

A No, sir.

Q That is all you have gotten off it?

A Yes, sir.

Q Did you get any government money?

A Not yet, I have got it coming.

Q Did you have any of it leased for pasturage?

A Yes, sir.

Q How much?

A 11 acres.

Q 11 acres that you got rent money for?

A Yes.

Q How much?

A I don't know.

Q That is leased to the government?

A Yes.

Q You haven't got anything from that yet?

A No.

Q Have you applied any of this money that you got from the cotton on your debts?

A Sure.

Q What debts did you pay with that?

A Martindale Mortgage Company.

Q You paid Martindale Mortgage Company, to apply on the insurance company's debt during 1937, $102.23?

A Yes.

Q That, as I understand it, went on back interest that you owed?

A Yes, sir.

Q After applying that payment at the end of this year, you still owe more than three years interest, you will still owe more than three years interest, won't you, that is correct, isn't it?

A (Witness made no audible response.)

THE COMMISSIONER: Do you know whether that is correct, Mr. Bartels? Mr. Bickett asked you whether

you still owed over three years interest after that $102.00 was applied.

A For 1938?

THE COMMISSIONER: No.

MR. BICKETT: Without the year 1938.

Q (by Mr. Bickett) I will ask you to look at this statement, just study that statement a minute and see if that is correct. (Passing paper to witness.)

A I don't know that I understand that.

Q You don't know whether that is correct or not. I will show you the claim which the insurance company has filed here, and which contains that same tabulation which you were just looking at. It shows the total principal and interest figured up to December 21, 1937, $7,284.94; $7,284.94 principal and interest due December 21, 1937. Is that correct according to your estimate? Just answer the question; state whether or not that is correct according to your estimate?

A (Witness made no verbal response.)

THE COMMISSIONER: Mr. Bartels, do you know whether that is the correct amount that you owe?

A 1937?

THE COMMISSIONER: No, that will be due on the first of January next year.

MR. LESLIE: No, it is figured to December 21.

A 1937?

Q (by Mr. Bickett) Yes, 1937, it does not include 1938, you see. We will put it this way, you don't deny any of these items, do you, the balance of the interest due for 1934, the amount due for the year 1935, the amount due for the year 1936, and at the end of this year there will be another interest installment due?

A It is '36, '37 and '35; that is $45.00.

Q You just don't know what you owe on it, do you?

A Not exactly, I don't understand it.

THE COMMISSIONER: Mr. Bartels, let me see—let me ask you this. Have you been keeping up with the interest that you owed from time to time?

A Yes, sir, but then I didn't figure it out exactly the amounts, that is, I think that includes 1938 there.

THE COMMISSIONER: Well, we don't want to include 1938. Have you any way that you can tell from your records up to what time you owe interest, and how much you owe?

A Well, I can if I look it up, yes.

Q (by Mr. Bickett) Let me show you this tabulation here, which purports to be a statement of payments made by you since you took it over and since the loan became delinquent. Glance at that and see if that is correct, Mr. Bartels. (Passing paper to witness.)

A Yes, that appears to be all right.

Q That appears to be all right?

A I don't understand that.

Q Does this statement appear to you to be correct?

A Yes.

Q I will just ask you to put your initials on this statement, and I will hand it to the reporter so we can identify it. Just initial it with your initials right there (indicating); put your initials on it so as to identify it as the statement that we are talking about. As I understand it, you say that statement appears to be correct, don't you?

A This here, yes (indicating.)

Q All right, I just want you to identify that so we can hand it to the reporter. So we can identify it; just put your initials on it.

THE COMMISSIONER: If it is correct put your initials on it so we will identify it.

(The witness wrote his name "Benno Bartels" on the (paper.

MR. BICKETT: Hand that to the reporter there. Mr. Persinger, put that in evidence.

(Said instrument was received in evidence, marked (Exhibit A, and is hereto appended.

Q (by Mr. Bickett) Now, how do you propose to pay this delinquent interest on this loan?

A Well, I will tell you, by going back and farming it; I have got me a tractor, I think I will go back and farm it. I will give up the store. I am going to work it out.

Q You haven't been farming it yourself before?

A Not exactly, because I couldn't, I was sick all the time. Now I am better and I am going back to the farm. I think I can make it.

Q How many years since you actually farmed it yourself?

A Well, it has been about four years ago when I got hurt, I couldn't work any more, I am all right again now and I am going back and farm.

Q Do you have any hope of being able to pay up this back interest any time soon?

A Yes, sir.

Q Do you have any money or funds on hand that you can pay it with?

A No, sir, not right now.

Q Do you have any way of borrowing any money to pay up the back interest?

A No, I ain't got no money, if I could get it I would pay it.

Q You don't know where you could borrow any?

A Not right now.

Q Have you made any effort to refinance this indebtedness, get it taken up?

A Not exactly. Yes, some, but not exactly.

Q Have you applied to any loan company, any mortgage company or any insurance company for a loan?

A Yes, sir.

Q What happened when you made the application; did they refuse it?

A They refused it, yes, sir.

Q Why did they refuse it?

A They told me to go to Mr. Earnest over there.

Q Mr. Earnest, the representative of the Land Bank?

A Yes.

Q Did you make application to him?

A Yes, sir, and they only allowed me $54.00 an acre.

Q $54.00 an acre for all that land?

A Mr. Leslie wrote me they would settle the debt, but I wouldn't take $54.00.

Q Wouldn't take $54.00?

A No, sir.

Q The highest offer you could get from the Federal Land Bank was $54.00 an acre, that is $5,400.00?

A Yes.

Q The debt is $7,000.00?

A It wasn't at that time.

Q I am talking about this time.

A I didn't make application this time; it was three years ago.

Q You haven't made an application recently?

A No, sir.

Q Have you tried anywhere else to get any money recently, get a loan on the land?

A No, sir; of course, they told me they would make it, but I didn't take it so I didn't try any more.

Q You haven't tried any more?

A No, sir.

Q You don't know of any place where you could get more than $54.00 an acre at this time?

A They offered me $54.00.

Q Do you know of any place where you could get more than $54.00 an acre?

A Well, right now I haven't tried it.

Q What is the condition of the place there with respect to being in Johnson grass, isn't it pretty well covered with Johnson grass?

A Some places, not all.

Q It is pretty well scattered over the 85 acres that are in cultivation?

A It is scattered there, yes, sir.

Q As a matter of fact, it has been poorly farmed by your tenant this year, hasn't it?

A Yes, sir.

Q And last year it was poorly farmed, wasn't it; you did not get enough off of it to do much more than to pay the taxes?

A Well, I got something.

Q In its present condition what do you consider that land is worth an acre, just as it stands now, the reasonable market value of it at this time? We want you to give us your estimate. What is your opinion as to the reasonable market value of the land at this time per acre?

A (Witness made no verbal response.)

THE COMMISSIONER: What do you think it is worth Mr. Bartels?

A You mean if we have to sell it?

MR. BICKETT: Yes, at this time.

THE COMMISSIONER: I don't know whether it would be if you had to sell it.

MR. BICKETT: Not having to sell it, what is the reasonable market value today from some one who is willing to buy from a man who is willing to sell?

A I think it is worth $100.00 an acre.

Q (by Mr. Bickett) You think it is worth $100.00 an acre?

A Yes, sir.

Q You think the whole place is worth $10,000.00, is that your idea of the value?

A You mean the house and the farm?

Q I mean everything as it stands.

THE COMMISSIONER: That would include the house on the 100 acres.

MR. LESLIE: That would include the improvements on the 100 acres.

A That is a different thing, I wouldn't sell it for $100.00.

Q (by Mr. Bickett) I mean with the improvements on it?

A $150.00.

Q You wouldn't sell it for less than $150.00 an acre?

A No, sir.

Q Do you know of any land in that vicinity that has sold for that recently?

A Not recently. I paid more than that, I paid $200.00 an acre for that land.

Q As a matter of fact, you could not get $60.00 an acre for it now, can you? What is the highest price you think you could sell it for now?

A $100.00.

Q You think you can get $100.00 an acre for it?

A Yes.

Q Have you had any offer from anybody to pay $100.-00 an acre for it?

A No, I never did try to sell it.

Q You have not made any effort to sell it?

A No, sir.

Q You don't know what you could get for it, do you?

A I think I can get $100.00.

Q Have you heard of any land in that community selling at $100.00 an acre?

A Well, the place next to me sold for mighty near that.

Q When?

A About three or four days ago.

MR. LESLIE: Why didn't you sell it, Mr. Bartels?

A How?

MR. LESLIE: Why didn't you sell it if you can get $100.00; that would give you an equity of $3,000.00?

A You didn't give me no chance to sell it.

MR. LESLIE: You have had it three years.

Q (by Mr. Bickett) Have you made any efforts to sell it?

A No, I didn't.

Q Do you intend to make an effort to sell that land?

A Sure, as soon as they give me a chance.

Q How much time do you want to try to sell it?

A When I can.

Q Do you have any plan or proposal to submit to your creditors, Mr. Bartels, as a composition or extension of your debts in these proceedings?

A No. I want to pay everybody that I owe, sure.

Q You don't have any definite, concrete plan now, do you?

A No, not exactly, but I want to pay everybody I owe.

Q How are you going to raise the money to farm the land this coming year? Can you tell us how you are going to raise the money to farm it?

A I will just have to get out and make a little.

Q I mean from what source can you raise money, Mr. Bartels; from whom can you get it and where, do you know?

A I don't know what you mean by that just exactly.

Q You have got to have some money this year, don't you, to farm the 100 acres?

A Yes, sir, sure.

Q Have you any money on hand?

A No, sir.

Q Do you know of anybody that you can get it from?

A Not right now, but I believe I can.

Q You believe you can. You haven't gotten anybody to say they would loan you any money?

A No, but I always could get some, a little from the bank.

Q Do you know anybody in the bank that would lend you money to finance this coming crop year?

A I always did. The First National Bank at New Braunfels always did give me money.

Q Did they finance you this past year?

A Yes.

Q Did you give them a crop mortgage?

A No, sir.

Q How much do you owe the bank?

A The crop mortgage I always give to Martindale Mortgage Company.

Q Or the insurance company?

A Yes, sir.

Q How much do you owe the bank?

A Not nothing now.

Q You don't owe the bank anything?

A No; sir.

Q Did you borrow any money from them this past year, during 1937 did you borrow any money from the bank?

A No, not this past year I didn't borrow any money from the bank. You asked if I could get some, and I think I can get it.

Q You haven't tried this year?

A No, sir.

Q Don't you feel like, Mr. Bartels, that it is a hopeless situation for you to be able to get enough money to pay up this back interest?

A No, I don't think so.

Q Well, you can't make it out of this coming year's crops, can you?

A I don't know; I can't tell.

Q In view of your experience if past years, you can't make that much net, can you?

A I always make it when I worked it; the first six or seven years I always did make it.

MR. LESLIE: How much per acre is the normal income from that land per year; what would you say the normal income would be, would it be $10.00, $15.00 per acre after deducting the expenses of making the crop?

A I can't figure that much. About $6.00 an acre, somewhere around there.

Q (by Mr. Leslie) You think the net income would be around $6.00 an acre?

A Yes, sir.

Q In other words, about $600.00 a year?

A Yes.

Questions by Mr. Bickett:

Q Has it averaged that over the past five years or not?

A Not the last five years. Of course, I had it rented out on the halves, but I am going to work it myself from now on.

Q Well, you owe the insurance company more than $1,200.00 interest, don't you?

A Including 1938, yes, sir.

Q I mean without 1938. Mr. Bartels, look at these figures here (exhibiting paper to witness).

A Yes, I know.

Q It will be $1,284.00?

A I don't understand.

Q You don't understand it. You do say that the statement that you initialed is correct?

A Otherwise, but that includes 1938.

Q We disagree about that. The claim speaks for itself; we won't argue about that. Isn't it a fact that the end of this year, it is now figured up to December 21, that you owe $1,284.94? You don't know how much interest you owe, do you? Have you got any books and records which will show how much you owe?

A I have got the checks there. I will have to look them up.

MR. LESLIE: This figure here is not figured to January 1, this figure is to December 21, this year.

Q (by Mr. Bickett) Mr. Bartels, you testified that the statement there is correct as to the payments that were made?

A That includes 1938.

Q Well, I will ask you to look at the statement again. You will see that it does not.

A '36—'35.

Q I will ask you to read that "Interest accruing from January 1, 1937 to December 21, 1937, $375.92." That is the last item of interest shown on the statement, isn't it? Answer it so the reporter will get it. Isn't that the last item of interest shown? Just read this item here, Mr. Bartels.

A Yes.

Q Read it out.

A "'37—"

Q Read it out loud so the reporter can hear you. You can read that line, can't you, Mr. Bartels, this line right here?

A I don't—

Q Read it out so the reporter can hear you; read it out, please, sir?

A "Accrued interest January 1, 1937 to December 31, 1937—"

Q That is "December 21", isn't it?

A "21".

Q What is the amount?

A $375.00.

Q And ninety-two cents?

A Ninety-two cents.

Q That is the last item in the statement, isn't it?

A How come that $375.00?

MR. LESLIE: It is less than a year.

Q. (by Mr. Bickett). You are not just clear as to how much interest you owe, are you, Mr. Bartels?

A Not exactly, no. I know I don't owe that much interest.

Q But the record does show that you bought the property from Mr. Martin Kroesch and got a deed from him—what is the date of that, Mr. Miller?

THE COMMISSIONER: July 17, 1930.

Q July 17, 1930. That is correct, isn't it, if the record shows that is the date of it?

A It must be correct.

Q It must be correct?

A Yes.

Q Then when the interest came due after that you got in default and just paid a part of it, didn't you, January 10, 1931 you paid $200.00, didn't you?

A Well, that is what it says there.

Q That is the first payment you made. Then on August 10, 1931 you paid the balance of $190.00. As a matter of fact, you have been delinquent, behind in your interest payments ever since you bought the property, haven't you?

A No, sir.

Q You always paid up promptly?

A No, sir, not for the last few years.

Q The last few years you have been delinquent?

A Yes, sir.

Q You have been delinquent, behind in your interest payments, for the last six years, haven't you?

A No, I always paid something every year.

Q Always paid something. What you mean, Mr. Bartels, is that you were unable to pay it all when it was due and you paid what you could?

A I paid all I could pay.

Q You paid all you could pay, but you could not pay the installments as they became due?

A Not the past five years.

Q Well, the last six years, since you got the property, look at that statement there. Were you not delayed about eight months in making this payment?

A That year (indicating)?

Q 1931, that is right, isn't it?

A That is the date.

Q Yes, it is the date. I mean you were delayed in making the payment because you were unable to pay it promptly, that is right, isn't it?

A Yes.

Q So as a matter of fact you have been delinquent with your interest payments, that is, behind in keeping up your payments, ever since you took the land over, haven't you?

A I don't understand that. I think—

THE COMMISSIONER: Mr. Bartels, the first year you paid interest was for the year 1930, that interest was due at the end of the year and you were unable to pay that interest, all of it, until August of the following year, 1931, that is correct, isn't it? The 1930 interest that you owed was due January 1, 1931, that is correct, isn't it?

A But I got this land longer than that. When I bought the land I made a loan right away, that must be a mistake in the date somewhere. I can bring the deed down here. That must be a mistake.

Q (by Mr. Bickett) You did not take it over at any time before you got a deed, did you?

A No, I have a deed to that land back in 1925.

Q You last got title to this land by deed from Martin Kroesch in 1930, didn't you?

A I think that is right, yes.

Q And ever since you have had the land this last time, under a deed from Martin Kroesch in 1930, you have been a little bit behind with your interest payments, haven't you?

A I think so, yes, sure; yes.

Q Now, you really don't have any way of raising this back interest and paying it up, do you?

A No.

Q How long do you think it will take you to pay it out of the crops?

A I think I can make it in three years.

MR. LESLIE: Keep the interest paid up?

A Yes, sir.

MR. LESLIE: The back interest, current interest and taxes?

A Yes, sir.

Q (by Mr. Bickett) You say the average income will be about $600.00 a year. Do you realize that out of that you would have to pay current interest as you go along, that is $390.00?

A Yes, if you charged the same interest.

Q You believe that you can pay each year's interest as you go along during the coming three years and make enough to pay all of this back interest?

A Yes, I made it before and I think I can do it again.

Q As a matter of fact, you have never been able, since you got the property in 1930, have you, to pay your interest promptly?

A That is only a half.

Q That is only a what? I didn't understand that.

MR. MILLER: He said, "That is only a half", because he rented it on the halves.

A Because I couldn't work it; I was sick.

Q What equipment besides the tractor have you got to farm with, Mr. Bartels, by way of teams and tools?

A I have got the tractor.

Q I say besides the tractor, what implements, tools and teams have you got?

A I don't understand what you mean.

Q Have you got anything besides the tractor to farm with?

A No, because I want to trade the mules in for the tractor. I got the tractor already but I want to put them in.

Q You haven't got any teams?

A No, not any more.

Q No mules or horses?

A Just got a horse.

Q Just one horse?

A Yes.

Q You haven't got any work stock, have you?

A No.

Q What implements have you got besides the tractor?

A Cultivator, plows and stuff like that.

Q Is that tractor mortgaged?

A No, not yet.

Q You don't owe anything on your tractor?

A Oh, yes, sure.

Q That is what I mean. How much do you owe on your tractor? Just tell us approximately, not down to the exact cents, how much do you owe on your tractor?

A Well, approximately about $500.00.

Q Approximately $500.00 on your tractor. Are your payments up on that, or are you in default in your payments?

A No, they don't come due until next year.

Q You just bought the tractor recently?

A Yes.

Q What was the total price of it?

A $1,100.00.

Q $1,100.00. How did you pay the $600.00; did you pay $600.00 on it?

A I put the mules in.

Q With the mules—teams that you traded in?

A Yes, sir.

Q That leaves you owing a balance of $500.00, secured by a mortgage on the tractor, isn't it?

A Well, they have not taken it yet, I reckon they will.

Q You signed up a note, didn't you?

A Not yet.

Q Who did you buy the tractor from?

A Guenther. I haven't signed any note.

Q Give that name again.

A Guenther.

THE COMMISSIONER: Where are they located?

A In New Braunfels.

THE COMMISSIONER: Are they implement people?

A No, just tractor people.

Q (by Mr. Bickett). They just sell tractors in New Braunfels?

A Yes.

Q You bought it from them and you paid them $600.00 in money?

A No.

Q You traded your teams in for $600.00?

A Yes, sir.

Q Did you give a note for the balance?

A Not yet, he never took a note yet, I think he will do it.

Q You agreed to give a note?

A Yes.

Q Secured by the tractor?

A I reckon they will, I don't know.

Q Did they ask you to give a crop mortgage?

A No, they didn't ask me.

Q Are you going to pay that $500.00 in installments or pay all of the balance at once at the end of the year?

A At the end of the year I agreed—

Q You agreed at the end of this coming crop year to pay it; at the end of 1938 you would owe $500.00, is that right?

A No, sir, half of it.

Q You would owe half of it and half next year?

A Yes, sir.

Q That would be $250.00 that you would owe on your tractor?

A Yes.

Q Plus your interest and taxes. That is what you would owe, that is right, isn't it?

A Yes.

Q What other debts have you, Mr. Bartels, besides the insurance company's mortgage?

A Mrs. Kraft here.

Q What is the amount of Mrs. Kraft's debt?

A I think it is $900.00.

Q $900.00. Is that borrowed money?

A Yes, sir.

Q When did she lend you that money?

A I don't know.

Q Well, about how long ago?

A I don't know exactly.

Q Was it a year ago, two years ago, how long?

A No, about seven or eight years.

Q It is represented by a note?

A Yes, sir, a personal note.

Q Any security?

A No, sir.

Q Does that note bear interest? Have you kept the interest paid up?

A So far.

Q You don't owe any back interest?

A Well, I will owe this year.

Q This year. Was that the original amount of that note?

A No, sir, it was $1,000.00.

Q You have paid $100.00 on the principal?

A Yes, sir.

Q Have you renewed that note lately?

A Yes, sir.

Q When?

A A month ago.

Q About a month ago. She has no security?

A No, sir.

Q What rate of interest does that note bear?

A Six per cent.

Q So that would be $54.00 interest that you owe Mrs. Kraft, is that right, six per cent on $900.00?

A Yes, sir.

Q What other debts have you got?

A Mrs. Sauer, $500.00.

Q Mrs. Sauer?

A Yes.

Q S-a-u-e-r?

A Yes, sir.

Q $500.00 borrowed money, is that right?

A Yes.

Q When did you borrow that money?

A Seven or eight years ago.

Q Seven or eight years ago?

A Yes, sir.

Q Does she have a note?

A Yes, sir.

Q Is the interest paid up on that note?

A Yes.

Q Except for this year?

A Yes.

Q Have you renewed that note lately?

A Last year.

Q Renewed it last year. What rate of interest does it bear?

A Six per cent.

Q How much is that note; did you say $600.00?

A $500.00.

Q So that would be $30.00 a year interest that you owe her, is that right?

A Yes, sir.

Q What other debts do you have?

A I think that is all.

Q You don't owe anybody else?

THE COMMISSIONER: You owe Robert Meyers $700.00.

A Robert Meyers, yes.

Q Is that a note?

A Yes, sir, a personal note.

Q When did you borrow that money?

A That is about four or five years ago, something like that.

Q What rate of interest does that bear?

A Eight per cent.

Q Is the interest paid up on that except for this year?

A Yes, sir.

Q What did you say the amount of that was?

THE COMMISSIONER: $700.00.

Q (by Mr. Bickett) That would be $56.00 you owe on that, wouldn't it?

A Yes.

Q Do you owe anybody else?

A No, sir.

Q Do you owe any accounts, open accounts or bills?

A No, sir, that is all.

Q What other property, Mr. Bartels, do you own besides this 100 acres, what other real estate?

A I don't know exactly, I have got it there somewhere.

Q Do you own a homestead?

A No.

Q You don't own a home?

A I live on the place.

Q You live on the 100 acres?

A Yes, sir.

Q Do you own any other real estate besides this 100 acres?

A Just two lots up there in San Antonio.

Q Two lots in San Antonio?

A Yes.

Q Where are they located?

A Berlin Heights.

Q What heights?

A Berlin Heights.

Q Berlin Heights. What do you think those lots are worth?

A $500.00.

Q The two of them are worth $500.00, $250.00 each?

A Yes, sir.

Q Are they mortgaged or clear?

A No, sir, they are clear.

Q Do you owe anything on them?

A No, sir.

Q When did you buy those?

A I don't know exactly. It was in—

Q Several years ago?

A Yes, longer than that.

Q Are they vacant lots?

A They are vacant lots. I bought them in 1917, I think, somewhere around there, '16 or '17.

Q You don't own any other real estate, do you?

A No, sir.

Q Are the taxes paid on those lots in San Antonio?

A Yes, sir.

Q Are those lots in the city limits; where are they located?

A I sure can't tell you; I don't know whether they are in the city limits or not. They are just opposite, what do you call that school?

Q What street are they on?

A East Commerce Street.

Q Out towards the Seguin Road?

A That big school that is out there.

MR. LESLIE: West Commerce Street, the Lady of the Lake College.

A The Lady of the Lake College.

Q (by Mr. Bickett) That has a lot of Mexican property out there, Mexican houses built on the lots?

A I think so, I have never been out there; I have had them over twenty years.

Q You haven't seen them for some years?

A I never did see them.

Q You haven't had any offer to buy them?

A Yes, several times.

Q How much did they offer you?

A $450.00.

Q $450.00 for the two lots?

A Yes, but I am not willing to sell them.

Q You are not willing to sell them for that?

A No, sir.

Q How much did you pay for them?

A $510.00.

Q For the two of them?

A Yes.

Q Was this offer you had recently?

A No, about a year ago.

Q What are you holding them for; what do you think they are worth?

A $500.00.

Q You wouldn't sell them for less?

A Not unless I have to.

Q You don't own any other property, do you, any other real estate?

A No, sir.

Q Have you got any livestock, cattle?

A Well, just mules, but I traded them in for the tractor.

Q You have got only one horse now?

A One horse.

Q That is all the livestock you have, no cattle, you have no cattle?

A One cow.

Q One cow. Do you have one automobile?

A Yes.

Q What kind of a car is that?

A Chevrolet, 1931.

Q Chevrolet, 1931. You have got household furniture, haven't you, in the house you live in?

A Yes, sir.

Q What kind of a house is that on the 100 acres where you live?

A It is a six room house with bathroom, seven room house.

Q Have you been living there this year, this crop year?

A Yes.

Q You have worked the place on the halves?

A Yes, been working it that way, but I am going to work it myself now.

Q What does your family consist of, how many members in your family?

A My wife and son.

Q How old is your son?

A He is twenty-one now.

Q Has he been working the farm for you this year?

A No, sir, he is going to work it for me next year.

Q This coming year?

A Yes, sir.

Q This year did you have one tenant or several?

A Just one Mexican.

Q One Mexican tenant?

A Yes.

Q And he cultivated about 85 acres?

A He tried to, but he didn't work it.

Q He didn't work it. The same way last year?

A You couldn't tell him nothing.

Q As a matter of fact, he farmed it in a mighty sorry way?

A You know how some renters are, you can't tell them nothing.

Q That was true last year?

A He is gone now.

Q How long was he there?

A He was there four years.

Q And those four years he farmed it in a mighty sorry way, did he?

A Yes, sir.

Q Now, let me ask you again. Do you have any definite proposal to make to your creditors here today as to how you are going to pay up your debts and what your plan is?

A Well, my plan is, I am going to try to work it like I did before because I am going to pay everybody; I want to pay everybody, and I am doing my best to try and pay everybody.

Q Don't you realize that your interest, taxes and all these debts you owe is more than the income from the property?

A Maybe so, but it just depends upon—I am going to try to make it if I have a little chance, you know. When we have no work on the farm I am going to try to make a little money on the outside.

Q What other way have you got to make money, what other business have you?

A No other business right now except on the road, something like that.

Q Doing outside work?

A Yes, sir.

Q You haven't any teams?

A No.

Q You mean you would get a job on the road?

A Yes.

Q Who with, who do you expect to get a job with?

A The county commissioner.

Q Can you farm that land and hold a job on the outside?

A I told you, when I can't farm, when I was through farming, otherwise I was going to work the farm, that is the first thing I am going to work is the farm. The main thing I want is to farm, get it clean again.

Q You mean you haven't got a job in sight, but you hope to get one?

A Yes, sir.

Q You don't have any trade that you work at, do you?

A Not now any more; no, sir, not right now, I am going to try to work it out and I think I can.

Q What does your boy do; is he in business, or does he have a trade that he works at?

A No, right now he is going to work the farm, he has been working in the mill, he can get a job there any time he wants to, but we want to get the farm in shape, that is what I want.

Q Don't you feel, Mr. Bartels, that in view of all this money you owe, it is a hopeless proposition, you can't pay it?

A I don't think so; if we could get half way prices, I don't think so. If we don't get no prices then it is hopeless, that is one thing sure.

Q Don't you feel like the debt against this land, the principal and interest, is about all it is worth at this time?

A No, I don't think that, if it was I wouldn't keep it.

Q Don't you think you could buy as good land as that cheaper now?

A No.

Q What is the condition of the improvements on the place?

A The houses?

Q Yes.

A I think the house is worth more than what I owe.

Q Are the improvements in good repair, have you kept them in good shape?

A Yes.

Q How about the fences?

A Well, the fences, they are not so good, but the improvements, the house and everything, when they come up there to look at it, I told Mr. Leslie that time that I have been improving the house, keeping the improvements, and they are in just as good shape—

MR. LESLIE: Your out house is not, Mr. Bartels.

A How?

MR. LESLIE: Your out house is not in good repair.

Q (by Mr. Bickett) The tenant houses and barns?

A Well, that is the tenant.

Q You spoke of the condition of your health. Are you still in bad health?

A No, sir.

Q Completely recovered?

A Yes, sir.

Q You spoke of getting hurt?

A I have been hurt in the back.

Q How did you get hurt?

A Lifting.

Q Lifting something too heavy for you and strained your back?

A Cotton bales.

Q You strained your back lifting cotton bales?

A Yes, sir.

Q When did that happen?

A Several years ago.

Q You have been laid up since then, have you, and couldn't do any work?

A I have been doing work, but I couldn't do any farm work.

Q You feel like you can do farm work now?

A Yes, sir.

Q You think you will be able to do farm work this year?

A Yes, sir.

Q Is your son and wife in good health?

A Yes, sir.

Q Your son is not married; he lives with you?

A No, sir, he is not married; he lives with us.

Q Do you have any money on hand, cash in the bank?

A No.

Q How have you made your living expenses during this past year, Mr. Bartels, from what source?

A Outside work.

Q Just doing labor work when you could get some work?

A Yes, sir.

Q You and your boy?

A All I made on the farm Mr. Martindale was to take that.

Q That was not enough—

A That is right, the other interest I had to make up my own self.

Q Have you and your son work now; are you working at this time?

A Yes.

Q Who are you working for now, Mr. Bartels?

A I am working on the farm now.

Q I mean have you got a job?

A Not right now, no, sir.

Q How long since you had a job?

A Since I haven't worked in the store, since a few days ago.

Q You have been working in the store?

A Yes, sir.

Q What was your income from the store business?

A Just a living, that is all.

Q Just the groceries and supplies for you and your family?

A Yes, sir.

Q You did not get any extra pay in addition to your groceries?

A No, I worked for the groceries.

Q Who did you say your partner was?

A Gilbert Kroesch.

Q You testified that you are going to get $250.00 for your share of the store, about that, didn't you?

A About that, yes, sir.

Q You and your partner don't own the store building —are you renting the store building?

A The only thing we owned was the store.

Q Where is your store located?

A Clear Springs.

Q In the settlement or village there of Clear Springs?

A Yes.

Q Who owns the land where the store is there?

A The Guaranty State Bank.

Q You have been renting the store building?

A Yes, sir.

MR. BICKETT: I believe that is all the questions I have to ask Mr. Bartels.

EXAMINATION

By The Commissioner:

Q Mr. Bartels, when did you sell your interest in the store; when did you sell your stock of goods?

A He is going to buy—he is going to buy it on the first of January.

Q Oh, he is going to buy it?

A It is not sold, but he says he is going to buy it.

Q Is the store still open and operating?

A It is open yet, yes.

Q He is supposed to take it over on the first of January?

A Yes, sir.

Q And you are going to be paid according to the inventory?

A That is right. He said he is going to take it, that is what he told me.

Q How much is he going to pay on the dollar of the inventory price?

A Well, we didn't make no exact agreement yet; I don't know exactly, I couldn't tell you exactly.

Q Is he going to pay you as much as the stock inventories?

A Well, I reckon I have to give him a little discount on it; I think so, yes, sir.

Q Are you reasonably sure that you are going to get that money from the sale?

A That is what he told me.

Q Who is the man you have sold to?

A Kneupper.

Q Kneupper?

A Yes.

Q Where is his home?

A Comal.

Q Where?

A Comal.

Q Comal Town?

A No, Comal.

MR. LESLIE: Comal, a little store.

Q (by the Commissioner) Have you got your rent paid on the store?

A Not all of it yet.

Q How much is still owing on it?

A I owe between fifty and sixty dollars, somewhere around there.

Q Mr. Bartels, the $900.00 that you owe Mrs. Kraft here, when is that due?

A Well, that note is written on the first, I think it is.

THE COMMISSIONER: Mrs. Kraft, when is your note due?

MRS. KRAFT: I don't know.

A VOICE: It was written October 14.

THE COMMISSIONER: It is due next year?

MRS. KRAFT: Yes.

THE COMMISSIONER: When is this note to Mrs. Sauer due?

A VOICE: It is due on the first.

THE COMMISSIONER: The first of the coming year?

THE VOICE: Yes.

THE COMMISSIONER: Is that note going to be extended?

A I don't know, I haven't talked to her.

A VOICE: It will be extended.

Q (by the Commissioner) When is the note due that you owe Mr. Meyers?

A That is written on the five year plan, I don't know what you call it.

Q When did you give the note?

A I gave the note last year, a new note on five years' time.

THE COMMISSIONER: Mr. Bartels, the only way that I see that you can in any way get by is to apply the money that you get from your store, and to sell those lots that you have up in San Antonio even if you don't get $500.00 for them, and turn that money over to Martindale Mortgage Company and then probably make some kind of a proposition and get them to give you more time on the rest. It looks like you are going to have to do that before you—

MR. BARTELS: I am willing to do it; sure, I am willing to do everything I can.

THE COMMISSIONER: Well, now if you turn in the money that you get from the sale of your store, and turn in those lots in San Antonio, say, for instance, those lots would be worth $400.00 and your interest in the store $200.00, that is $600.00.

If he applied that on this debt do you think that you could work out some method by which you could extend the rest of this debt?

MR. LESLIE: I don't think so. The delinquencies amount to about $1,200.00, the current interest is coming on, then there are taxes. I don't think he could make it. The crops off that land are not going to be sufficient, there will be at least $600.00 more for current operations, that will leave all the delinquencies behind. The only way—the only thing we could recommend would be to bring the

—to pay the current delinquencies and extend it—recommend an extension at a lower rate.

THE COMMISSIONER: Of course, there are no assets with which to pay all those delinquencies and that is out of the question.

MR. LESLIE: Mr. Bartels mentioned a lot of money due him. Is that shown in the schedules?

THE COMMISSIONER: Have you got any store accounts due you?

MR. BARTELS: Yes, they ain't very much, I guess $1,500.00.

MR. BICKETT: How much? $1,500.00; how much did you say, Mr. Bartels?.

Q (by the Commissioner) How much store accounts are owing to you, about?

A Oh, the store accounts? Well, I don't know exactly.

Q (by Mr. Bickett) Well, approximately how much, $100.00, $200.00?

A About $100.00.

Q About $100.00; not over $100.00. Are those bad accounts that you can't collect?

A No, I don't think so.

Q You think they can be collected?

A Yes.

Q You mean all of that $100.00 will be coming to you?

A I think so, yes, sir.

Q Have you sold those accounts to Kneupper; does he take over those accounts?

A I don't think so.

Q Do you know whether he will or not; have you sold him those accounts?

A No.

Q That is not in your deal with him?

A No, sir.

Q (by the Commissioner) The note by Martin Kroesch, that is a personal note?

A That is a personal note.

Q Can you collect anything on it?

A Not at present; I asked him and he said he hasn't got anything right now.

MR. LESLIE: Is he a lawyer in Houston?

A No, not a lawyer, he is working—yes, he studied law—he is working for a wholesale house.

MR. BICKETT: What is the amount of that note?

THE COMMISSIONER: $1,500.00.

Q (by Mr. Bickett) Is that note past due?

A Yes, sir.

Q Is that borrowed money that he got from you?

A Yes, sir.

Q A good many years ago?

A Yes, sir.

Q There is no hope of collecting anything on that?

A Not right now, but the way he talked I think next year, at the end of next year, not the first but by the end of next year—

MR. BICKETT: What other notes have you?

THE COMMISSIONER: Mittendorf, $300.00.

Q (by Mr. Bickett) Can you collect anything on the Mittendorf note?

A The same thing, not right now; I asked him the other day, and he said he was going to try to sell some of his stuff.

MR. LESLIE: Is it a secured note?

A No, it is just—

Q (by Mr. Bickett) Both of those notes are unsecured, they are both unsecured?

A Unsecured, yes.

Q Both are now past due?

A Yes, sir.

Q No interest has been paid on either of them for a long time?

A For quite a while.

Q Several years?

A Several years.

MR. LESLIE: Are the notes barred by limitation?

A No.

MR. LESLIE: Not over four years past due?

A No.

THE COMMISSIONER: Mr. Bartels, have you got any suggestion or proposition to make as to how you could go ahead and pay off this debt, these delinquencies, what disposition you could make of them to satisfy your creditors and get them to give you more time on the balance?

MR. BARTELS: Well, if they give me time I think I can work out all right, because if I get that money in—I am going to try to work my own self, as I say, I think I can work out all right, just so they give me a chance.

MR. LESLIE: The trouble is, Mr. Bartels, you are operating under a $7,000.00 debt and you haven't been able to carry the $6,000.00 debt and the accruals are coming on, you haven't been able to carry it on.

THE COMMISSIONER: Mr. Sauer, do you have any suggestions, that is, your mother or you, you represent your mother, regarding the note that she holds against Mr. Bartels?

MR. SAUER: It is kind of sudden; I don't know, I didn't ask my mother, because she didn't receive any notice, I guess the letter must have been lost or something like that.

THE COMMISSIONER: What is her post office address?

MR. SAUER: New Braunfels.

THE COMMISSIONER: New Braunfels, Route 2?

MR. SAUER: No, city.

THE COMMISSIONER: How is that?

MR. SAUER: She lives in the city of New Braunfels.

THE COMMISSIONER: Well, she should have gotten it anyhow, I addressed it to Route 2.

MR. SAUER: Route 2. She never received no letter like that; I asked her Saturday if she received a letter from here, and she said, no. I can't hardly say what her idea is.

THE COMMISSIONER: Do you know, Mr. Sauer, whether she will be willing to extend this debt that Mr. Bartels owes her?

MR. SAUER: I guess so. I am pretty sure of it.

Questions by Mr. Bickett:

Q Mr. Bartels, I believe you said when you bought the land from Martin Kroesch you assumed the insurance company debt. You understood, didn't you, that made you liable on the note?

A Yes.

Q Now, if you get released from the note so that you would not be liable under the note, be through with the transaction, would you be willing to deed the land over in consideration of the insurance company releasing you from any personal liability on the note?

A I don't understand what you mean.

Q Well, I mean if the insurance company would agree to release you, not hold you liable or responsible on the note that you assumed, would you be willing to deed the land over?

A I don't think so, I think the land is worth a whole lot more.

Q You think there is an equity in the land to you?

A Yes.

MR. LESLIE: Would you be willing to sell the land if you got an offer of $100.00 an acre?

A Yes, sir.

MR. LESLIE: Will you try to sell it at $100.00 an acre?

A Sure, if I can sell it at $100.00 I would sell it so I can pay my debts, that is all I want, I want to pay my debts.

MR. BICKETT: You haven't got any prospects of selling it at this time, have you?

A I never tried, because I never did want to sell it, I always wanted to keep it, that is what I have been working for all my life.

THE COMMISSIONER: Have you got any land plowed there now, Mr. Bartels?

A What is that?

THE COMMISSIONER: Do you have any land plowed?

A Some of it, yes, sir. I didn't start in until late; I didn't know whether I would stay there or not, we are at it now, yes, sir.

Q (by Mr. Bickett) How many acres have you got plowed up to now?

A I don't know exactly, but we just started.

Q Well, how much, five or ten acres?

A Oh, fifteen or twenty.

Q Fifteen or twenty acres plowed?

A If we could get one dry week we will be through. I got a man there who promised to help me, he has got a tractor.

Q You are going to hire a man to run his tractor there?

A No, sir, he is just going to help me; one of my neighbors, he is a good friend, he said he was going to help me.

Q What is your arrangement about that?

A He said he would help.

Q You are going to buy the gasoline?

A I would have to buy the gasoline, sure.

Q He is going to run his tractor, and break the land for you for nothing?

A Yes, sir.

Q Not charge you anything?

A He is going to help me out, that is what he said.

Q (by the Commissioner) Mr. Bartels, you say you do not have any definite proposition to offer them. You are willing, however, to turn any money that you get from your store and to convert those lots into money and apply that on the payment of the Martindale Mortgage Company debt?

A Yes, sir.

Q And then you propose to work out the remainder of your debt to the Martindale Mortgage Company, including the current interest, within the next three years, I believe you stated a while ago, is that correct?

A Yes, sir.

Q Now then, that is your proposition, so far as the Martindale Mortgage Company debt is concerned? Now, do you feel that your other creditors that hold these personal notes against you, that you will be able to satisfy them to wait until you—

A I think so, either that—I don't know if I can make it, but that money that I have got loaned out there, that $1,800.00—

Q You think that you could probably pay them out of the money that you collect from the people that owe you?

A Yes.

Q Now would you also be willing, if you could collect any money that is outstanding now, to apply that on your delinquent debts?

A Yes, sir, sure, I want to pay all I can.

Q All right, is there anything more that you can do here? Is there anything else that you can offer that you know of?

A Not at the present, no, sir. I want to try to do all I can.

THE COMMISSIONER: Under the circumstances I believe it would be useless for him to offer anything more here, or do anything more, because there are no assets out of which to pay it with.

Questions by Mr. Bickett:

Q Mr. Bartels, really the only definite money that you have got in sight is from the sale of your interest in the store, isn't it?

A Right now, yes.

Q You don't know whether you could ever make a sale of this land, do you?

A I haven't tried.

Q You haven't had an offer in some years?

A No, but I think I can if I tried to sell it, I think I can.

Q You feel sure you couldn't collect anything on those notes?

A Not at the present.

Q During this coming year?

A Maybe one of them, but not the other one. Mr. Mittendorf, he promised to pay some, I don't know how much. That is due in April and he told me that he thinks he can pay some of it, not at all of it. Martin Kroesch, I don't think he can pay anything, he said he couldn't the last time I talked to him.

THE COMMISSIONER: Where does he live?

A In Houston.

THE COMMISSIONER: What does he do?

A He works for Radoff Brothers Wholesale Dry Goods.

MR. LESLIE: Is that Mittendorf or Kroesch?

A Kroesch.

MR. LESLIE: Where does Mittendorf live?

A He lives in New Braunfels.

MR. LESLIE: Mr. Bartels, didn't you tell me about a month ago that you had a large amount of store accounts due you, and I suggested to you that you go out and collect them?

A Yes, sir.

MR. LESLIE: And now you say you have only $100.-00?

A I believe you can collect those probably.

MR. LESLIE: I was questioning you about the amount and you told me it was quite a large sum, you indicated it was $1,000.00 or $1,200.00 due you?

A No.

MR. LESLIE: You said it was a lot of money and you could pay us if you could get it.

Questions by Mr. Bickett:

Q What is the total of those accounts, your part of it?

A Like I say, about $100.00.

Q About $100.00, not more than that?

A No, sir.

Q You don't have much hopes of collecting that, do you?

A Well, I think I could collect about half of it anyhow.

Q This note that Martin Kroesch owes you, have you made any suggestions to him that he pay you monthly payments out of his salary, make small payments?

A Yes, I talked to him and he said—

Q He couldn't do anything?

A Yes, not this year.

Q Has he ever paid anything on it, is that the original amount?

A That is the original amount; no, he never did pay.

Q It has been running on for several years?

A Yes, sir.

Q He has not paid any interest?

A No, sir.

THE COMMISSIONER: Well, that is about the only proposal that I can see that can be made; I don't know that there is anything else that can be offered.

Now, of course, he is not making that as his original proposition, he is making that—I have suggested that to him, because he hasn't an attorney, but in view of the circumstances I don't know what other suggestion could be made or what other proposition could be made. I don't believe there is anything else that could be proposed. If he is willing to do that, that is about the only thing that I see that he can do.

Now, as I understand it, that is all the proposal, that is all you can do, that is the only suggestion you have to make, Mr. Bartels?

MR. BARTELS: Yes, sir.

THE COMMISSIONER: Now then, if you gentlemen feel that you should accept it, you, of course, are the ones who will have to be satisfied because you represent the majority amount of the total debts by far.

MR. LESLIE: There is not anything definite in it, Mr. Miller. It is just a suggestion, there is nothing definite there that I can see.

MR. BICKETT: Based on his hopes and expectations.

THE COMMISSIONER: There is nothing that I can see, there is nothing more definite to suggest unless you have some way that you can make it more definite. I don't know of any way to make it more definite. I agree with you that it is not very definite, but I don't know any other way to make it more so.

MR. BICKETT: No, with his limited resources I don't see how you can suggest anything else or propose anything else.

THE COMMISSIONER: If that is not acceptable we will have to—

MR. BICKETT: I think we might let the record show that the John Hancock Mutual Life Insurance Company would decline, does decline that proposal as not being feasible, not being acceptable to it.

THE COMMISSIONER: Now, we will have to so report it to the Court for further action.

MR. BICKETT: Yes, sir.

THE COMMISSIONER: All right, that is about all we can do in this case.

Mr. Sauer, I don't know whether I asked you, but I want to ask whether your mother would be willing to extend this debt of Mr. Bartels'?

MR. SAUER: I am pretty sure she will.

THE COMMISSIONER: Mrs. Kraft, do you feel like extending the debt or renewing the debt?

MRS. KRAFT: I believe we will keep it like it is now.

MR. SAUER: It is extended for one year now.

THE COMMISSIONER: All right, there is nothing definite about this, there is no definite agreement. If Mr. Bartels and the insurance company can't agree on that, the only thing that I can do is to report these things to the Federal Court. I don't know what action will be taken on it, but that is all we can do here today anyhow.

MR. SAUER: All right.

THE COMMISSIONER: Mr. Bartels, that is all you can do here today.

* * * * * * *

(The hearing then at 12:10 o'clock p. m. was (adjourned by the Commissioner.

STATE OF TEXAS)
COUNTY OF BEXAR)

I, H. L. Persinger, Shorthand Reporter, do hereby certify that I attended the hearing before the Honorable Alvin P. Miller, Conciliation Commissioner, Guadalupe County, State of Texas, at Seguin, Texas, cause No. 1988—Bankruptcy, proceedings for composition or extension, in the matter of Benno Bartels, Debtor, on the day and date set out in the foregoing transcript; that at said time I took down in shorthand the proceedings had; that thereafter said shorthand notes were reduced to typewriting under my supervision, and that the foregoing pages 1 to 62, both inclusive, contain a full, true, and correct transcript of the proceedings had.

Witness my hand at San Antonio, Texas, this the 27th day of December, A. D., 1937.

H. L. PERSINGER
Shorthand Reporter.

MARTINDALE MORTGAGE

2002 Alamo National Bank Bldg.
San Antonio, Texas

STATEMENT OF PAYMENTS MADE BY BENNO BARTELS
On Loan No. 65803—KROESCHE

- - - - - -

Since loan became delinquent:

Paid 1-1-1931 interest in two payments:	1-10-1931	$200.00	
	8-10-31	190.00	$390.00
Paid 1-1-1932 interest in 5 payments:	1-15-32	$ 50.00	
	5- 4-32	40.00	
	8-25-32	120.82	
	9- 9-32	135.07	
	9-23-32	44.11	$390.00
Paid 1-1-1933 interest in 3 payments:	8-23-33	$151.76	
	10-6-33	140.00	
	12-1-33	98.24	$390.00
Payments thereafter (not completing any one year's interest in one year: Payments received in 1934—2 totaling			$240.00
Paid in 1935:			
Re-payment 1932, 1933 & 1934 tax advance by the Insurance Co.		$86.85	
On account of delinquent interest		68.07	$154.92
Total paid in 1936			$323.77
Total paid in 1937			$102.23

COPY

Filed 14th day of Jan. 1938.

NARRATIVE STATEMENT OF EVIDENCE.

INDEX

	Direct	Cross	Redirect	Recross
Schlafley, Captain A.	2(70)			
Bounds, Ed	2(71)	5(73)		
Whitsett, Silver	5(73)	7(75)		
Wiess, Willie	8(75)			
Becker, Gus	10(77)	10(77)	11(79) 12(79)	12(79)
Donnegan, Hugh	12(79)			
Vogel, Albert	14(81)	15(81)	16(82)	
Bernhardt, August	16(83)	18(84)	18(84)	
Baker, D. D.	18(85)	20(86)	21(87)	21(87)
Bartels, Benno	22(88)	26(91)	27(92)	27(92)
Friesenhahn, R. E.	27(92)	28(93)	28(93)	
Schultz, William F.	29(94)	30(94)		

EXHIBITS

	Page.
Photographs, A to H, inclusive	9(76)
Letter dated March 22, 1934 from R. F. Leslie to Benno Bartels	24(89)
Oral Opinion by Court (see page 99).	

NARRATIVE STATEMENT OF EVIDENCE.

(Title Omitted).

BE IT REMEMBERED, that upon the trial of the above numbered and entitled cause, before the Honorable Robert J. McMillan, Judge of said Court, beginning on the 5th day of April, A. D., 1938, and continuing thereafter until completed, the same being regular term days of the Court, the following evidence was adduced and proceedings had:

APPEARANCES:

L. M. Bickett, Esquire, appearing on behalf of the petitioner, John Hancock Mutual Life Insurance Company;

T. E. Mosheim, Esquire, appearing for the bankrupt.

MR. BICKETT: We have no new evidence to offer, but would like to reserve the right to offer witnesses in rebuttal.

CAPTAIN A. SCHLAFLEY, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Captain A. Schlafley. S-c-h-l-a-f-l-e-y is correct. I am resident county engineer of Guadalupe County for the State Highway Department. As such employee of the State Highway Department, I have surveyed a road between New Braunfels and Seguin. That proposed road passes right in front of Benno Bartels' 100 acres near Clear Springs. A portion of his land is used for the right of way. That road is to be a paved state highway; the

appropriation is already made and the designation has been made by the State Highway Department.

ED BOUNDS, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Ed Bounds. I live at Seguin, Guadalupe County, Texas. I am a building contractor. As such I make estimates on the cost of buildings and likewise advance money for the construction of them. I contract to construct buildings. I am familiar with the cost of various places, residential buildings and farm buildings, and their values in Guadalupe County.

As to whether or not I have had occasion to view the buildings situated on the 100 acres of land known as Benno Bartels' place near Clear Springs, in Guadalupe County, I have been there. I examined all of the buildings as they are. I made notes of them as I examined the buildings. Using those notes to refresh my memory of what the improvements consisted of on that piece of land at that time, the improvements on the tract of land mentioned consisted of a residence, smoke house, immediately behind the residence a store house, a barn, feed room, considerable fencing, chicken houses, pig pens, and two rent houses.

The main dwelling house is 32 by 48. I estimated the value of that house, taking into consideration all of the materials that went into it, and the cost of labor, and allowing for depreciation. To rebuild it at the present time the dwelling house would cost approximately $4,100.00. I wouldn't allow over $250.00 for depreciation. The amount which it would take to put the house back into the shape it

was before, at the time it was built, would be about $3,800.00 to do the work. That is taking into consideration the depreciation on the house, which is in pretty fair shape.

I don't have my notes here on the size of the barn. I estimated it would cost $1,300.00 to rebuild the barn. I wouldn't allow a depreciation of over $150.00 on the barn. The barn is made of principally rough lumber, it has a flooring in there. The outside sheathing is all corrugated iron and the roof. It is not a cheap barn.

I have down here next the smoke house at $160.00. I am doubtful if I can reproduce it for that, $160.00, that is what it is worth now.

I have got an allowance here for $235.00 for fencing. I estimated the number of running feet of fence at so much a foot. The fence amounts to $235.00.

The two rent houses are in different stages of repair. The value will be $600.00 for the two rent houses. That is taking into consideration their present state, their present value, you couldn't rebuild them for that I don't believe, the two of them.

I have got down here some odds and ends, chicken houses, pig pens. I place a value of $90.00 on them.

To rebuild all of those present improvements it would run approximately $6,485.00, and allowing the depreciation that I have, $485.00, to get a good job I would say the value would be $6,000.00, that would be a conservative estimate of what it is worth now. That does not take into consideration the pumping plant and water system, I don't sell pumps, I don't know anything about pumps. I couldn't qualify on that. I haven't taken that into consideration.

CROSS EXAMINATION

By Mr. Bickett:

As to how old those improvements are there, of course, that would be my opinion, and anybody can make a mistake. I would say that they have been there nine years or ten years.

I think the depreciation on the tenant houses, the smoke house and barn is only about $485.00, yes, sir.

* * * * * * *

SILVER WHITSETT, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Silver Whitsett. I am county agricultural agent for Guadalupe County. I am a graduate of A. & M. College of Texas. I graduated in 1924. Since that time I have been connected with the extension service organization college work for farmers, farm work, working in the counties with farmers doing farm work.

We pay very little attention to the scientic classification of the soil other than the larger group classification in counties. We do make surveys as to that. Yes, sir, I am acquainted with bad soil and good soil, I have studied those.

I have had occasion to go out and view the 100 acres of land near Clear Springs, in Guadalupe County, known as the Benno Bartels place. That soil is known in Guadalupe County as exceptional black land that comes down into that part of the county, that is a black loam. It is the most fertile soil we have in Guadalupe County.

I would say that Mr. Bartels' farm is a good average as compared with its class in its group of black land farms that we have in that county. It is fertile.

As to whether I noticed when I went up there the condition of that farm, whether it is being operated in a farm like manner, or whether it is neglected, I may answer that in this way. We have a farm program in Guadalupe County where the farmer is taught to make a cash crop out of his cotton crop, raising feed, livestock and poultry to back it up. That is what I found on Benno Bartels' farm, I know he is operating under that program. He has plowed his land, he uses a tractor. He was planting corn the day we were there; at that time he had not planted his cotton; I don't know at this time whether he has planted it or not. I was out there about ten days ago.

This year the farmers in Guadalupe County, operating under our program, are about ready to begin planting cotton in Guadalupe County. Mr. Bartels' land is in condition to begin planting cotton.

Mr. Bartels has about 120 barred rock hens, which is a pretty good number on any farm; he has probably 150 to 200 baby chicks coming along as replacements in that flock. I found that he had a brood sow and three other hogs in the pen, prospective meat hogs. I also found that he had a couple of milk cows, not the best bred cows in the county, but good cows for producing milk there for home use.

In his orchard he has principally peaches and plums. He has a few pecan trees, not many.

From my experience with farmers, I consider that Mr. Bartels is carrying on an average farm like we advocate for the county, that the Agricultural Extension Department of A. & M. College advocates.

CROSS EXAMINATION

By Mr. Bickett:

As to the infestation of that land with Johnson grass, Bermuda grass and cockleburs, at that time, I would call it a slight infestation. Probably if you would throw it all together, the way it looked at that particular time, I wouldn't estimate over five or ten acres solid. Yes, I saw it after it had been plowed out and I have seen it previous to that time. Yes, there is a creek or draw that runs through the land. As to how much acreage that takes up, that would be just a rough estimate, I would say probably twenty-five acres. That land can be cultivated, however, it has seed infestation, it is subject to overflow. A part of it is in cultivation now, but not right down close at the average overflow area.

As to what that farm ought to produce annually in its present condition, it is rather hard to make an estimate on that particular farm. I can give you average for the particular communities of which that farm is a type. A man working that farm should make somewhere in the neighborhood of $100.00 a month. That depends on the breaks the man gets there. As to whether or not that return is inadequate, under some conditions it would not be adequate.

WILLIE WEISS, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Willie Weiss. I live in Seguin, Texas. My business is pictures, photographic studio.

Yes, sir, at the request of some one I did go out to a

farm of 100 acres, known as Benno Bartels' place, near Clear Springs, and take some pictures. I have those pictures here with me. These are the original pictures.

This one represents mainly the water system or water tank, looking at it from the Seguin highway. (Exhibit A) That is on Benno Bartels' place.

This picture represents Benno Bartels' house, his dwelling, looking at it from the same position as the previous picture. (Exhibit B)

This is a picture of Mr. Bartels sitting on his tractor while he was plowing the land when we got there. He was plowing when we got there and we had to wait for him to get across the field. (Exhibit C)

This is the barn, looking at it from the back part of his house. (Exhibit D)

This is one side of the field, if I remember correctly that is the south side of the road which runs through his property, that divides his property. (Exhibit E)

This is the barn from the northwest side, I would say. (Exhibit F)

This is the field on the other side of the road, the left hand side. (Exhibit G)

This is the road that divides his property, looking you might say from the New Braunfels road to the northeast. (Exhibit H). If I remember right, that road leads to Freihert, F-r-e-i-h-e-r-t.

I took those pictures, if I remember right, on March 25, one Friday afternoon between 2:00 and 3:00 o'clock. No, I had not notified Mr. Bartels that I was coming out there, that I know of, to take those pictures. I did not notify Mr. Bartels.

(The bankrupt then offered in evidence the photographs (heretofore identified, same being marked Exhibits A (to H, both inclusive.

(The Court then at 12:00 o'clock m. recessed until 1:20 o'clock p. m., whereupon the following proceedings were had:)

GUS BECKER, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Gus Becker. I live at New Braunfels, Texas. My occupation is real estate business. I have been engaged in the real estate business since 1930, continuously. During the course of that time I think I have become familiar with the values of real estate in that part of Guadalupe County, Texas, which is contiguous to Comal County. New Braunfels is in Comal County, the two counties adjoin each other near Clear Springs.

Yes, I know the value of land around Clear Springs. I know of a certain 100 acres of land belonging to one Benno Bartels, near Clear Springs. The value of that land without improvements, the cultivated land, not taking into consideration the improvements, is around $70.00 per acre, that is, excluding the houses and barn.

CROSS EXAMINATION

By Mr. Bickett:

Yes, sir, I know of that place. I mean by that, that I drive by there ever once in a while. I didn't walk over it,

but I passed by it going to Seguin and also going the other way.

I don't know exactly how much of that land is in a creek or draw, on the left hand side that thirty-three acres is just a narrow place, you know, but in the lower end it spreads out. I doubt if it is as much as fifteen acres in the creek or draw, I hardly think it is that much, it might be between around ten and fifteen acres, I don't know for sure, something like twelve acres, I guess.

Yes, sir, I know of sales being made in that immediate vicinity for around $70.00 per acre within the last two or three years, the one right next to it, adjoining it, was sold at $75.00 per acre. The improvements on that land were mighty poor improvements. That sale was last fall, I think, last year, it was sold to Mr. Timmerman. It belonged to some loan company; Mr. Timmerman bought it, that is what I heard, that it sold for $75.00 an acre, that is what I was told.

No, sir, it is not a fact that I have some land of the same kind and quality as Bartels' land across the river that I am offering to sell for around twenty or twenty-five dollars an acre. I don't have any land in that vicinity listed with me exclusively, no, sir. I have a place this side, I think it is a little less than 84 acres, belonging to Mr. Rea, Adolph Rea, I was offered $8,000.00 last year some time for that, in fact he wanted $12,000.00, but he come down to $10,000.00. No, I don't know that it is a fact that there are several tracts of land in that vicinity that have sold at $40.00 an acre within the past two or three years, not that I know of.

REDIRECT EXAMINATION

By Mr. Mosheim:

The land that was sold to Mr. Timmeram, that adjoins Mr. Bartels' place. Mr. Bartels' place is a better piece of land than the land bought by Mr. Timmerman, it is better soil; based upon my experience as a real estate man, I think that is the better soil on Mr. Bartels' place.

RECROSS EXAMINATION

By Mr. Bickett:

I don't know exactly that this Timmerman tract had a $7,500.00 lien on it, and it was sold for less than that by the loan company or insurance company. I was told by some people that ought to know that it sold for $75.00 an acre. I did not make the deal; I would not say, I don't know for sure.

REDIRECT EXAMINATION

By Mr. Mosheim:

Yes, sir, I have sold land to Mr. Timmerman. He is a shrewd buyer, he doesn't buy unless it is a bargain. What I mean is he wants it at his price.

HUGH DONNEGAN, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Hugh Donnegan. I live in Seguin, Texas. My occupaion is insurance agent. I have been in the insurance business a little over twenty-six years. As an in-

surance man I have had experience in valuing buildings. I have had about twenty-six and a half years experience in valuing buildings.

When a person is taking out fire insurance it it my duty to go out and appraise the building on which the insurance is to be taken out. I have been doing that consistently, yes, sir.

Some of the companies I represent at this time are the Home of New York, United States Fire of New York, Republic Underwriters, Trinity-Universal, I have represented some of them over twenty-five years.

Yes, I have had occasion to appraise the dwelling house and barn situated on Mr. Benno Bartels' farm near Clear Springs.

Mr. Bartels' place is about seven miles, six and a half or seven miles from New Braunfels. It is right at Clear Springs. Clear Springs is a country town or community center. They have got a cotton gin, a store building and blacksmith shop. It is a little community with various business houses and they have a bunch of camp houses down there, too.

The present value of the main dwelling house I estimate at $3,700.00 and the barn at $1,250.00, that would be about $4,950.00 for the two.

My appraisals are always checked by a special agent or field man, he checks up everything I write.

No, sir, I do not mean that I wrote $4,950.00 worth of insurance on Mr. Bartels' property, we don't write insurance for the full value, not often.

ALBERT VOGEL, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Albert Vogel. I live at New Braunfels, Texas. I am in the real estate and livestock business. I have been engaged in the real estate business pretty nearly all my life, a little bit in the real estate business and then in the livestock business; sometimes I quit them and then I start again.

I am sixty-five years old.

As a trader in real estate I think I have become acquainted with the values of real estate in and about Clear Springs, Guadalupe County, Texas. Yes, I have bought land around there, years ago I bought some land there, not far from there. Yes, I have had occasion to see land that other people have bought and sold out there and know the prices paid for it. I know the value of land in that section of the country.

Yes, I am acquainted with the 100 acres of land belonging to Mr. Benno Bartels at Clear Springs. I think the value of that land, not taking into consideration the improvements but the value of the cultivated land, is about $75.00 an acre. Yes, I have heard of some recent sales near there; I heard that Mr. Timmerman bought some there for $75.00 an acre. I think the land that Mr. Timmerman bought adjoins Mr. Bartels' land, I don't know that really, I wouldn't swear to it.

CROSS EXAMINATION

By Mr. Bickett:

Yes, sir, I have been on the Bartels farm and inspected it a lot of times. I go by there all the time. I have been out there, because I wanted it once for sale, I wanted to have it listed and they wouldn't list it with me.

I wish I knew where I could buy land out in that vicinity for $35.00 or $40.00 an acre, I would buy some. I don't know of any for sale at that price. No, sir, Mr. Timmerman did not trade another piece of land for this tract that he bought. No, sir, I don't know of my own personal knowledge what the terms of the sale were, the only thing what I know is I priced Mr. Schleyer's place, I had a buyer for that, that is not far off from there, and he backed out at the last minute when I had it sold. He wanted $100.00 an acre. I didn't make that sale because he wanted more money, he backed out.

As to when is the last time I sold a farm in Guadalupe County, I haven't sold any around there, I sold some for Mr. Martindale, some private people, about six or seven months ago, six months ago. That wasn't in that neighborhood, that was on Highway No. 2. It was not the same kind of land, that is clay and hilly.

No, I don't have any personal knowledge of the Timmerman sale.

REDIRECT EXAMINATION

By Mr. Mosheim:

I had a buyer for Mr. Schleyer's place. Schleyer had thirty acres and he wanted $3,100.00 for it. The buyer I had found for the land was willing to give him that money, but when I got down there he asked $3,500.00. I didn't have that listed, he just told me to find a buyer. Mr. Schleyer's place is not very far from Mr. Bartels' place, I believe there is one place between.

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AUGUST BERNHARDT, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is August Bernhardt. I live at Clear Springs in Guadalupe County. My house and Mr. Bartels' house are about one-eighth of a mile apart; my place adjoins his place.

My occupation is farmer. I have been a farmer since I was fifteen years old, that is twenty-three years.

Yes, sir, I know Mr. Bartels, my neighbor there, I have known him about twenty-five years. His occupation is farmer. Every since I have known him he has been a farmer. His occupation now is farmer. He is farming there on his place at Clear Springs, on his place there next to mine. I see his place every day.

Yes, I know when a place is being worked in a farm like manner. I have had enough experience as a farmer to know whether a place is being properly handled. From my twenty-three years' experience as a farmer I would say that Mr. Bartels is working his farm in a farm like manner.

Yes, sir, he has fruit trees on that place; he has peach trees; I have seen the peaches that are grown on those trees. Those trees bear nice large peaches, most of them, a few are small ones. I have bought some of those peaches.

Yes, sir, he has pecan trees on the place, I couldn't tell you how many. I have seen the pecans that were raised on that place. Those are grafted pecans, soft shell pecans, large soft shell pecans.

Yes, sir, there is electricity at Mr. Bartels' place, right up to the house. He has running water there.

Do I know anything about the value of land out there, am I capable of making a statement as to the value of that land, well, just what I hear what others are paying for it around there. Yes, sir, I have heard what others are paying for land around there. From that information and from being a farmer myself, I would say the value of that land, without the improvements, is $75.00 per acre.

Yes, I know the place that Mr. Timmerman is alleged to have bought. That adjoins Mr. Bartels' place. Mr. Bartels' land is the better land, it is newer land. I heard that Mr. Timmerman paid $75.00, $7,500.00 for that place; it has about 106 acres in it.

CROSS EXAMINATION

By Mr. Bickett:

No, I have no personal knowledge of the Timmerman sale, just what I heard from other people.

The Bartels farm, if properly cultivated, during an average crop year, for the whole place, ought to produce about $1,200.00. No, sir, I would not say it was properly farmed if that place produced only from two or five hundred dollars over the past four or five years.

REDIRECT EXAMINATION

By Mr. Mosheim:

Taking the average of years, taking the good years and bad years and throwing them together, that land ought to produce on an average of a quarter to one-third of a bale of cotton, that would be the average for a number of years.

On the same basis, taking the good years and bad years and throwing them together, the average yield per acre in corn ought to be thirty bushels per acre.

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D. D. BAKER, a witness on behalf of the bankrupt, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is D. D. Baker. I live in Seguin, Texas.

In addition to being the manager and perhaps one of the largest stockholders in the Cotton Oil Mill there at Seguin, I have sold land, bought land, and loaned money.

I have been selling land ever since I was twenty-one years old. I am sixty-one years old now. I have been lending money secured by real estate almost the same length of time. I have loaned considerably more money since 1902.

As to knowing of my own knowledge about the sale of some land to Mr. Timmerman, some land which he purchased next to Mr. Bartels' place, it is common repute that the property has been sold, and that it was sold for $7,500.-00. The deed is on record, I think. No, I have not examined that deed.

Yes, sir, I have made a thorough investigation of this particular case of Mr. Bartels'. I have made the investigation as a member of the Farm Adjustment Board of Guadalupe County.

With respect to the productivity of Mr. Bartels' farm, I understand from Mr. Bartels that on an average the land produced from thirty to thirty-five bushels of corn per acre and about a quarter to a third of a bale of cotton per acre.

In addition to my other activities I have occasion to know the future market on corn, to keep up with the future markets on corn, I keep a record of that and watch the quotations daily. As to the future quotations on corn as of the time that our crops down there usually come in, dur-

ing September, corn closed yesterday, September corn closed yesterday at about sixty-two cents.

The differential in Guadalupe County for corn bought and sold in the future markets there and other future markets is about twelve cents per bushel. That would make the probable future price of corn in Guadalupe County fifty cents a bushel.

No, sir, I am not as familiar with cotton futures as I am with corn futures. I am not qualified to make the same estimate as to cotton that I have made with corn.

I have seen this farm twice recently. I saw it previous to the other hearing, I believe it was February 8, and I have seen it once since then. The state of cultivation of that farm appears good to me. I understand from Mr. Bartels that he had plowed some of it twice when I saw it and other parts as many as three times with a tractor. The land seemed to be well cultivated.

CROSS EXAMINATION

By Mr. Bickett:

Yes, sir, I loan considerable money on farm lands. No, I don't know of any individual or any loan company or insurance company that would lend the amount of principal and interest which Mr. Bartels now owes on this particular farm, amounting to about $7,400.00. If I had that money available I would have loaned it to him. I offered to lend $9,000.00 on that piece of land that was sold to Timmerman, I think it was in 1936, it was just before the Dallas Land Bank took it away from them. Mr. Bartels was offered a loan of $5,200.00 on that property from the Federal Land Bank at Houston, that is what they offered to lend him.

REDIRECT EXAMINATION

By Mr. Mosheim:

That is correct, sir, the reason I did not make Mr. Bartels the loan was that I did not have the money available at the time. I don't think there is any question but that there is a probability that he will be able to get some loan, somebody to lend him enough money to take up the amount of indebtedness against the land, assuming it is around $7,400.00. I would obligate myself to let him have the money if I had it available, I would loan him $7,400.00 on it.

I don't have any loans that will become due in the near future, no, sir. Not in the next few months. I held $9,000.00 three weeks to take up that other loan that I spoke about. I held that money three weeks, and Mr. Kresche decided he would rather let it go. I held that $9,000.00 for him twenty-one days. I am quite sure that place could be refinanced within twelve months.

Some of the money I am talking about is mine, and then I have loaned approximately $50,000.00 for my brother at Memphis, Tennessee, that he turned over to me, I loan money continuously for him, I handle the Baker estate.

RECROSS EXAMINATION

By Mr. Bickett:

As to whether or not I know of any source at this time where Mr. Bartels could borrow more than the Federal Land Bank of Houston offered to loan him, that is, $5,200.00, well, I can answer that question this way. I understand that the people who hold this note were willing to sell it for less than $7,400.00. I asked Mr. Bozarth to get that in writing where they said they would take approximately $6,200.00 for the place. I am talking about the Bartels

place now. I knew that I could refinance it immediately for $5,200.00. I took it up with Mr. Bartels. We knew that between us we could go to the bank and get another thousand dollars for one year, which would fix it, and I figured that within twelve months his crop would come in and he would pay the $1,000.00 back to the bank. I would have been willing to go to the bank and sign a note with him for $1,000.00 to save his place. Had the insurance company not intimated that they were willing to sell the place for $6,200.00 for its debt of $7,400.00 I would not have known of it. No, sir, I don't know anybody at this time who would buy Mr. Bartels' farm for the amount of the debt against it, not today.

BENNO BARTELS, a witness in his own behalf, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Mosheim:

My name is Benno Bartels. I am the bankrupt in this case.

Since the previous hearing I have plowed the land twice, planted corn, sorghum, hegari, and have got it in good shape now.

The corn is up. I have got a good stand of corn.

Yes, sir, I am going into Federal reduction plan, the crop reduction plan. I am allowed thirty-five acres of cotton; corn thirty-five acres; that leaves me approximately thirty acres then that will not be put in to soil depleting crops. My plan under this Federal crop reduction plan is to build up that thirty acres with soil repleting crops by planting beans and stuff like that. The part that I am

leaving out and building up, that is the part near the creek there. I don't know exactly what the Government will allow me for planting that thirty acres in soil repleting crops, they have not announced that yet. Yes, sir, I will receive some pay for that.

Yes, sir, at one time I tried to get a loan from the Federal Land Bank. Yes, I have seen that before, that came to me through the United States mail, that is addressed to me, Mr. Benno Bartels, Route 3, that is my address. Mr. Leslie purportedly signed that. Yes, I have had other letters with that signature on it, that is the way all of them were signed.

(The bankrupt then offered in evidence the following (letter, same being marked Exhibit T, as follows:

San Antonio, Texas
March 22, 1934

Application No. 155917-J

No. 3477 Martin Kroesche
P/O Benno Bartels

Mr. Benno Bartels,
Route 3,
New Braunfels, Texas.
Dear Sir:

We have received advice from Mr. H. A. Ernst that your Federal loan has been approved for $2800.00 by the Land Bank and $2300.00 by the Commissioner aggregating $5100.00. You owe us $6,000.00 principal and $390.00 interest. We cannot conceive of anyone valuing your 100 acres at only $56.00 per acre which is reflected by the Federal Land Bank approval of $2800.00 as they are instructed to loan fifty percent of the value.

We do not believe that you could find anyone familiar with this land that would make a sworn statement that it

is not worth more than that. We believe that sale of this land today under present conditions and having in mind the present price of cotton would bring not less than eight or nine thousand dollars as the buildings are exceptionally good, the land is very desirable and the location excellent. There is a hard surface road and it is adjacent to a gin. We think you should appeal to Mr. Ernst whom you will find very ready and willing to assist you in demanding an increase of this loan and another inspection.

If the Federal Land Bank is to make appraisements as reflected in this application we do not think they will be functioning very long. We think it would be advisable for you to make an appeal to some one who will see that you receive an appraisement in line with the value of your property as we cannot accept the adjustment offered.

Yours truly,

R. F. Leslie

RFL:1h Vice President.

Since I filed my schedules in bankruptcy when I was in your office the other day, I have remembered a piece of property that I did not put down, that property consists mostly of gravel, a little gravel pit; it is a little gravel pit of about two and a half acres. I just forgot to include that in my schedules when I made out the original schedules in bankruptcy. As to whether or not that has any value, it has a lot of gravel on it; they are buying gravel out there now; they are paying about ten cents for gravel, ten cents a load at the pit. No, I don't know approximately the yards of gravel there is in that place.

MR. MOSHEIM: At this time, in view of that evidence, we would like to ask leave to amend our schedules and include that piece of property, the value of which we will

prove up as we go along, it just came to light after I had questioned Mr. Bartels more carefully.

THE COURT: Unless there is some objection, you will be allowed to amend the schedules. (No objection interposed.)

Yes; sir, I have scheduled a note owing by Mr. Kresche, Mr. Martin Kresche, that note is for $1,500.00. I know Mr. Kresche personally. I know the value of that note, that note is worth $1,500.00. The interest on that note has been paid up to the last interest due date. During the time that I have owned that note Mr. Kresche has never failed to pay me the interest, he has always paid it promptly.

I have listed in my schedules another note owing by Louis Mittendorf. Mr. Mittendorf lives in New Braunfels. That note is in the sum of $340.00; I know the value of it, it is worth $340.00. The interest has been paid on that note promptly each year, there is no back interest due on it at this time. I have known Mr. Mittendorf for a long time. Yes, sir, Mr. Mittendorf pays his debts.

CROSS EXAMINATION

By Mr. Bickett:

I let Mr. Kresche have that money in 1927, the note became payable after five years, it became due in 1932. He has not paid any part of the principal.

The other note, it is a new note, Mr. Mittendorf's note, it has not matured yet. That is the $340.00 note. No, sir, I have not made any effort to sell those notes. I don't know anybody who would buy those notes right now.

Yes, sir, I understand that the $1,500.00 note is barred by limitation.

REDIRECT EXAMINATION

By Mr. Mosheim:

Yes, I received a letter from Mr. Martin Kresche regarding that $1,500.00 note, which letter was signed by him and in which he acknowledged that he owed the $1,500.00, and I executed an extension of the note. No, sir, I don't have that letter with me. I have got it at home. No, sir, I couldn't get it here today.

RECROSS EXAMINATION

By Mr. Bickett:

No, I don't know any one who would lend me money on those two notes, who would buy the notes for any amount right now.

The Bankrupt rested.

R. E. FRIESENHAHN, a witness on behalf of the petitioner, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Bickett:

My name is R. E. Friesenhahn. I live at Selma, Texas. I testified at the previous hearing in this case. I have been in the court room and have heard the testimony of the other witnesses this morning as to the value of this land. I do not have any occasion to change my previous testimony. My previous testimony was that the land was worth $40.00 an acre and the improvements $2,000.00, that is still my opinion.

This picture that you have handed me of the barn is approximately a true representation of the barn on that place. The barn looks dilapidated right in this picture. I have seen the barn.

The fences are very poor and about to fall down.

Yes, sir; I am prepared, in my opinion, to state what is the reasonable cost for reproducing that barn, less depreciation. You could build a barn like that for a couple of hundred dollars, I am sure.

CROSS EXAMINATION

By Mr. Mosheim:

Yes, sir, I have built barns; I built my own barn; I used to farm.

As to how long I have been selling land for Martindale Mortgage Company, I only sold one tract for Martindale and that was last year. I haven't sold any since for the Martindale Mortgage Company.

REDIRECT EXAMINATION

By Mr. Bickett:

No, sir, I have no connection whatever with Martindale Mortgage Company. I am in the real estate business generally.

WILLIAM F. SCHULTZ, a witness on behalf of the petitioner, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

By Mr. Bickett:

My name is William F. Schultz. I live in San Antonio, Texas, and I am in the real estate business. I also deal in farms and real estate in Guadalupe County.

I testified at the previous hearing in this cause. I have heard the testimony of the witnesses as to what purports to be the value of this land and improvements. No, I do not want to change my previous testimony. I testified at the previous hearing that the land was worth $40.00 an acre and the improvements were worth $2,000.00. I arrived at the value of the improvements as being $2,000.00 by looking at the buildings, then I figured the government depreciation, the government allows you four per cent deducted off your income tax, on farm buildings the life of the building is allowed at twenty-five years.

I sold some land at Selma, I sold a place last year at Selma. It is the same kind of land as this land. I sold it for $54.00 an acre, 167 acres. No, sir, I do not know of any recent sales, since I testified in the previous hearing, in the vicinity of that farm. I sold a place of 210 acres in Guadalupe County at $10,000.00. I also sold a place at Galle for $60.00 an acre, a very highly improved farm.

No, sir, I have no interest in that matter whatever. I have no connection with the John Hancock Mutual Life Insurance Company or with Martindale Mortgage Company.

CROSS EXAMINATION

By Mr. Mosheim:

Selma is several miles from Mr. Bartels' farm; it is over on the old highway, New Braunfels-San Antonio highway.

This farm is between the new highway and Schertz, the Cibolo Valley, it is considered very good land. Yes, the other piece of land that I testified about is miles away from this particular farm. None of them were situated anywhere around Clear Springs.

With respect to whether or not I have sold land for Martindale Mortgage Company, occasionally, well, I sell for all the different people, I handle land for the Aetna, for the Massachusetts Life, and I have handled land for the John Hancock Life Insurance Company. No, I don't handle lands exclusively for insurance companies, I handle land for private people, I sell more land for private people than for insurance companies.

No, sir, I am not usually used by the John Hancock Life Insurance Company and Martindale Mortgage Company in cases of this kind to value property for them. This is the first time I have ever been on the witness stand for them.

AGREEMENT OF COUNSEL

It is agreed by and between counsel for the respective parties hereto that the above and foregoing is a full, complete, true and correct statement in narrative form of all the evidence adduced and proceedings had upon the hearing of the above entitled and numbered cause on the 5th day of April, A. D. 1938, and that the Court on said date took into consideration, in addition to the above and foregoing. the Stenographer's Transcript of the proceedings before the Conciliation Commissioner and the conciliation commissioner's report which are on file among the papers of this cause and which shall be included as a part of the record, and that the Court likewise took into consideration the evidence of the witness D. D. Baker given on a previous hear-

ing of said cause, a witness for the Bankrupt, to the effect that the 100 acres of land on which the creditor, the John Hancock Mutual Life Insurance Company, has its lien was worth conservatively $12,000.00, and that upon such hearing the said D. D. Baker qualified himself as an expert relative to the value of property; and that the Court likewise took into consideration the evidence of the witness C. A. Krueger, a witness for the Bankrupt, who qualified himself as to the value of real estate in Guadalupe County, Texas, and testified that the 100 acres of land on which the creditor John Hancock Mutual Life Insurance Company has its lien was worth not less than $12,000.00. It is further agreed between counsel for the respective parties that the foregoing Statement of Facts, together with said Conciliation Commissioner's Report, and the substance of the testimony of the witnesses Baker and Krueger as set out in this agreement, shall constitute a complete Statement of the Facts adduced upon the hearing of the above entitled and numbered cause on the 5th day of April, A. D. 1938, and may be settled and filed as such.

T. E. MOSHEIM
Attorney for the Bankrupt.

HENRY, BICKETT & BICKETT
Attorneys for the Petitioner,
John Hancock Mutual Life
Insurance Company.

CERTIFICATE OF THE JUDGE

The Bankrupt, Benno Bartels, having tendered the foregoing as Bankrupt's Bill of Exceptions to the rulings of the Court upon the trial of this cause, and it appearing to the Court that the parties hereto, by their attorneys, have stipulated and agreed that the same contains a full and complete, true and correct, statement in narrative form of all the evidence adduced and proceedings had in said cause on the 5th day of April, A. D. 1938, and that it may be settled and filed as the Bill of Exceptions on this appeal;

It is, therefore, ordered that the same be, and it is hereby approved and ordered filed as the Bill of Exceptions on this appeal.

Entered at San Antonio, Texas, on this 16th day of May, A. D. 1938.

ROBERT J. McMILLAN Judge.

Filed May 16, 1938.

ORDER SETTING ASIDE ADJUDICATION IN BANKRUPTCY AND DISMISSING DEBTOR'S PETITION FOR COMPOSITION AND EXTENSION.

(Title Omitted).

This day came on to be heard in the above numbered and entitled matter the motion heretofore filed by John Hancock Mutual Life Insurance Company, praying that the order heretofore made herein on the 10th day of January, A. D., 1938, adjudicating the debtor, Benno Bartels, a bankrupt, be set aside, and, also, praying that the debtor's petition for composition and extension and all proceedings thereunder be dismissed; and the court, having heard and fully considered said motion, the evidence, and the argument of counsel, is of the opinion that said motion should be granted.

It is, therefore, considered, ordered, adjudged, and decreed by the court that the order heretofore made herein on the 10th day of January, A. D., 1938, adjudicating the said Benno Bartels a bankrupt, be and the same is hereby in all things set aside; and it is, further, ordered, adjudged, and decreed by the court that the debtor's petition for composition and extension and all proceedings thereunder be and the same are hereby dismissed.

Dated at San Antonio, Texas, this 5th day of April, A. D., 1938.

ROBERT J. McMILLAN
United States District Judge.

Entered: Bankruptcy Minutes, Vol. 3, Page 553.

Filed 5th day of April 1938.

ORAL OPINION OF COURT
Delivered April 5th, 1938.

(Title Omitted).

McMillan, District Judge.

As I indicated at the inception of this matter, this debtor was adjudged bankrupt under Section 75 (s), without notice and without an opportunity being given to any creditor to contest the matter. Later a motion was filed by John Hancock Mutual Life Insurance Company to dismiss the case on various grounds and the Court set a date for a hearing on the motion. After hearing the evidence fully and completely, the Court was of the opinion and so expressed himself that the matter could not be further maintained here for several reasons. First, the evidence did not clearly show that the debtor was within the purview of the Act in that for some time before the filing of the petition, he farmed the property, by tenants, on the shares, and the principal portion of his income was not derived from that operation; second, the Court was further of the opinion that the debtor's situation was such that there was no reason to believe that he could be rehabilitated and the bringing of the matter here was simply to postpone the evil day and increase the amount of his indebtedness without accomplishing any good to himself or to his creditors. For those reasons, I ordered the petition dismissed, but afterwards, upon reconsideration, as I stated at the outset today, I was of the opinion that I had probably taken the wrong procedure; that in as much as I had adjudicated the debtor bankrupt, the proper procedure would be to reopen the matter by having a motion filed to set aside that adjudication. That procedure has been approved by the Circuit Court for the Fifth Circuit in the case of Baxter v. Savings Bank of Utica, 92 Fed. (2d) 405. Accordingly, the Court set aside

the order dismissing this case and left it standing in statu quo, that is to say, with the debtor adjudicated under subsection (s).. The John Hancock Mutual Life Insurance Company has now filed this motion to set aside that adjudication on the ground that the order was not properly entered.

I see no reason, because of the hearing that has been had here today, to change my views as originally expressed with regard to the motion to dismiss.

One of the authorities, speaking with regard to the right of a farmer to advance under subsection (s), says this:

> "The Courts have, however, qualified the right of the farmer to advance into (s) merely upon the rejection of a proposal. Perfunctory compliance with the prior subsections is not sufficient to authorize proceedings in (s)." In re Shaeffer, 14 F. Supp. 807; In re Borgelt, 79 F. (2d) 929; In re Hilliker, 9 F. Supp. 948. "The farmer-debtor must first have submitted in good faith a valid proposal for the composition and/or extension of his indebtedness, and his failure so to do may be urged by the creditors when the debtor undertakes to amend his petition under (s)." Steverson v. Clark, 86 F. (2d) 330, In re Schaeffer, 14 F. Supp. 807; In re Borgelt, 79 F. (2d) 929; In re Hilliker, 9 F. Supp. 948; In re Vater, 14 F. Supp. 631.
>
> "The requisities for a valid proposal have been expressed variously. In general, it seems clear that a proposal must be definite and unconditional." In re Buxton's Estate, 14 F. Supp. 616. "Composition or extension proposal by farmer-debtor that he would pay secured creditors as promptly as loans could be obtained from named bank held insufficient." Citing In re Schaeffer, 14 F. Supp. 807.

"In re Borgelt, 79 F. (2d) 929 (C. C. A. 7th, 1935) (proposal contingent on loan from Federal land bank not valid). It must be feasible and reasonably calculated to effect a debt liquidation. Helbstab v. Equitable Life Assur. Soc. of U. S., 91 F. (2d) 655, 659 (C. C. A. 10th, 1937); In re Duvall, 14 F. Supp. 799 (W. D. Va. 1935); In re Wylie, 16 F. Supp. 193, 194 (W. D. S. C. 1936); In re Schaeffer, supra; In re Borgelt, supra; In re Siske, C. C. H. 1936 Bankruptcy Law Serv. Sec. 3931 (M. D. N. C. 1936); see also note 6 to Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, 300 U. S. 440 (1937). It has been likewise held that the proposal must be equitable. In re Duvall, supra; In re Vater, supra; In re Schaeffer, supra. It must be submitted promptly. In re Schaeffer, supra; In re Borgelt, supra; In re Sterba, 74 F. (2d) 413 (C. C. A. 7th, 1935)."

Now, in the Baxter case, decided by the Circuit Court for the Fifth Circuit, to which I referred a moment ago, the Court there, speaking on the matter of good faith in the proposal said:

"It has been pointed out that good faith in this connection means more than the absence of actual fraud. A bona fide effort to compromise with creditors is made a prerequisite to the relief afforded under subsection (s). * * * The primary purpose of Section 75 is the composition and extension of the debts of distressed farmers. The function of subsection (s) is to provide temporary relief to those who might be able to adjust their difficulties but have failed in the preliminary proceeding. Its presence in the Act has the additional

effect of providing an inducement to secured creditors to accept a feasible plan when offered. Thus, its presence in the Act is in aid of the composition provisions, resort to which is made a prerequisite to the relief afforded. It may not be treated as an end in itself, with the other proceedings as mere procedural steps to be taken toward the relief there afforded. It follows that the offer of composition or extension was not made in good faith."

Having these principles of law in view, I will turn to the testimony of the debtor, Bartels, before the Conciliation Commissioner as to whether a definite offer of compromise or extension was made prior to the time that he was adjudicated under subsection (s).

On page 22 of the transcript occurs the first reference to the matter. He is there asked:

"Q. Do you have any plan or proposal to submit to your creditors, Mr. Bartels, as a composition or extension of your debts in these proceedings?

"A. No. I want to pay everybody that I owe, sure.

"Q. You don't have any definite, concrete plan now, do you?

"A. No, not exactly, but I want to pay everybody I owe.

"Q. How are you going to raise the money to farm the land this coming year? Can you tell us how you are going to raise the money to farm it?

"A. I will just have to get out and make a little."

Now, on page 41 the matter was again approached; he was asked:

"Q. Now, let me ask you again. Do you have any definite proposal to make to your creditors here today as

to how you are going to pay up your debts and what your plan is?

"A. Well, my plan is, I am going to try to work it like I did before because I am going to pay everybody; I want to pay everybody, and I am doing my best to try and pay everybody.

"Q. Don't you realize that your interest, taxes and all these debts you owe is more than the income from the property?

"A. Maybe so, but it just depends upon—I am going to try to make it if I have a little chance, you know. When we have no work on the farm I am going to try to make a little money on the outside."

Again the matter came up on page 53 of the transcript. There the Commissioner, who seemed to take a friendly attitude toward the debtor, to attempt to protect his interest, as he properly should have, asked him:

"THE COMMISSIONER: Mr. Bartels, have you got any suggestion or proposition to make as to how you could go ahead and pay off this debt, these delinquencies, what disposition you could make of them to satisfy your creditors and get them to give you more time on the balance?

"MR. BARTELS: Well, if they give me time I think I can work out all right, because if I get that money in—I am going to try to work my own self, as I say, I think I can work out all right, just so they give me a chance."

Again on page 56 of the transcript the Commissioner asked him:

"Q (by the Commissioner). Mr. Bartels, you say you do not have any definite proposition to offer them. You are willing, however, to turn any money that you get from your store and convert those lots into money and apply that on the payment of the Martindale Mortgage Company debt?

"A. Yes, sir.

"Q. And then you propose to work out the remainder of your debt to the Martindale Mortgage Company, including the current interest, within the next three years, I believe you stated a while ago, is that correct?

"A. Yes, sir.

"Q. Now then, that is your proposition so far as the Martindale Mortgage Company debt is concerned? Now, do you feel that your other creditors that hold these personal notes against you, that you will be able to satisfy them to wait until you—

"A. I think so, either that—I don't know if I can make it, but that money that I have got loaned out there, that $1,800.00—

"Q. You think that you could probably pay them out of the money that you collect from the people that owe you?

"A. Yes.

"Q. Now would you be willing, if you could collect any money that is outstanding now, to apply that on your delinquent debts?

"A. Yes, sir, sure, I want to pay all I can.

"Q. All right, is there anything more that you can do here? Is there anything else that you can offer that you know of?

"A. Not at the present, no, sir. I want to try to do all I can."

The matter is again brought up on page 60 of the transcript by the Commissioner:

"THE COMMISSIONER: Well, that is about the only proposal that I can see that can be made; I don't know that there is anything else that can be offered."

He turns to Mr. Bartels and says:

"Now, as I understand it, that is all the proposal, that is all you can do, that is the only suggestion you have to make, Mr. Bartels?

"MR. BARTELS: Yes, sir.

"THE COMMISSIONER: Now, then, if you gentlemen feel that you should accept it, you, of course, are the ones who will have to be satisfied because you represent the majority amount of the total debts by far.

"MR. LESLIE: There is not anything definite in it, Mr. Miller. It is just a suggestion, there is nothing definite there that I can see.

"MR. BICKETT: Based on his hopes and expectations."

The transcript reflects further, without attempting to sort out the parts of it, that he possibly had an interest in a two hundred or two hundred and fifty dollar stock of merchandise which he hoped to sell, and if he did, he was willing to pay that on his debts. The transcript further shows that he owned some lots in San Antonio which he had never seen, that might be worth five hundred dollars, but as to that he did not know.

It seems perfectly obvious that he has not made any proposal, viewing this record here in the most liberal and friendly light to him, that can be construed as a bona fide good faith offer for an extension or composition. He has nothing definite to offer. There is no offer made in writing at all, but waiving that point and construing this conversation had there during this examination as constituting his offer, then we can see nothing to warrant the Court in holding that there has been a valid offer of composition or extension as defined by the authorities or a proposal that could be construed as being equitable. That being the case, of course, he would not be entitled under subsection (s) to be adjudicated a bankrupt.

Furthermore, upon the other proposition as to whether there is any reasonable probability of his rehabilitation, the evidence indicates now that the indebtedness against this

particular one hundred acres at this time amounts to something over $8,000.00. There is interest now due, dating back over three years. There are items of interest amounting to $45.93, $8.86, $390.00, $49.79, $390.00, $24.44, $375.92, and $390.00.

Your claim is drawing six or eight per cent?

MR. BICKETT: Six per cent is my understanding.

THE COURT: At six per cent the interest charges will run between $400.00 and $500.00 a year.

MR. MOSHEIM: It has been running $390.00, I believe, in there.

THE COURT: Six per cent—

MR. BICKETT: It bears six per cent on the principal.

THE COURT: And ten per cent on past due interest?

MR. BICKETT: Yes, sir.

THE COURT: The interest charges are going to run $400.00 or $500.00 a year. In addition to that, there is over $1,600.00 past due interest. Furthermore, taxes are to be paid. If the debtor and his family are going to live on the farm and farm it, their living expenses manifestly will have to come from the farm. The record here shows that he practically has no other source of income if he abandons the store, which he apparently has, so he must look to the farm alone for his living expenses. He bought a tractor, trading for it some mules, and he owes on it something between $500.00 and $600.00 which only increases the financial difficulty in which he finds himself.

It is purely speculative as to what can be made on this farm, and we have no better light by which we can guide our feet than the lamp of experience. For a number of years, this farm has not paid any such fanciful returns as some of the witnesses seem to think it should; it has been shown that within the last three or four years, he has not

realized more than $300.00 or $400.00 from it. Of course, it has been testified that was because he did not farm it personally; that he has been in bad health. We have no assurance here that conditions in the future will be better than in the past. Assuming that he did make $300.00 to $400.00 from the farm, it would take that much to pay the current interest without making any payments on past due interest. Then we have the matter of operating expenses, living expenses and taxes to be considered.

The $1,800.00 worth of notes that he refers to are apparently long in arrears, and one of them, the larger of the two, is barred by limitation. Even though the indebtedness is admitted by the party who owes it, still there is nothing to indicate that there is any possibility of his paying it.

The evidence is in conflict as to the value of the land. Separating the land from the improvements, certain of the debtor's witnesses placed the value of the land at $70.00 per acre and the improvements at $5,000.00 or $6,000.00. Witnesses for the creditor placed the value of the land at around $40.00 and the value of the improvements around $2,000.00.

The Court fully realizes that it ought not to apply emergency prices to a matter of this kind or foreclose the possibility of rehabilitation on the theory that immedate liquidation could not be had. However, there is nothing here to indicate to the Court that there is any reasonable probability of this property being sold for enough to give any substantial equity at all to the debtor. The charges are mounting rapidly and any equity that may exist will be wiped out. Accordingly, the Court finds that there is no reasonable probability of the financial rehabilitation of this debtor. Within the purview of the law and under the decision of the Circuit Court in the Baxter case, the Court is

of the opinion that the order adjudicating the debtor a bankrupt under subsection (s) was improperly entered and should be set aside and the cause dismissed. That will be the order of the Court.

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April 23rd, 1938.

The Clerk will file this transcript of the Courts oral opinion with the papers in the case.

McMILLAN Judge.

Filed 23rd day of April 1938.

PETITION FOR APPEAL.

(Title Omitted).

TO THE HONORABLE ROBT. J. McMILLAN, JUDGE OF THE UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF TEXAS:

The above named debtor, Benno Bartels, conceiving himself aggrieved by the Decree made and entered on the 5th day of April, 1938, in the above entitled cause, does hereby appeal from said Order and Decree of the United States District Court for the Western District of Texas, San Antonio Division, to the Circuit Court of the United States for the Fifth Circuit, sitting at New Orleans, Louisiana, for the reasons specified in the Assignment of Errors filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said Order was made, duly authenticated, may be sent to the United Circuit Court of Appeals for the Fifth District.

T. E. MOSHEIM

May 5th, 1938 Attorney for Benno Bartels

Filed May 5, 1938.

ASSIGNMENTS OF ERROR.

(Title Omitted).

On this the 5th day of May, 1938, comes the petitioner, Benno Bartels, by the undersigned Attorney, and says that the Decree setting aside the Order adjudicating the petitioner a bankrupt and dismissing the proceedings, entered in this cause on the 5th day of April, 1938, is erroneous and against the just rights of the said petitioner for the following reasons:

I.

Because the evidence clearly and uncontradictedly showed the petitioner to be a farmer within the purview of Section 75S of the Bankruptcy Act.

II.

Because the evidence showed that the petitioner had a substantial equity in the real estate upon which the John Hancock Mutual Life Insurance Company has a lien, and referred to in these proceedings, being 100 acres of land out of the A. M. Esnaurizar XI League Grant in Guadalupe County, Texas; that is to say, that petitioner has an equity in said property over and above the debt of the John Hancock Mutual Life Insurance Company, which has filed a claim for $7284.94 not counting attorney's fees.

III.

Because it was error to dismiss this proceeding upon the supposition that no substantial equity was owned by petitioner in said property as such is not a prerequisite to the right to be adjudged a bankrupt under Sub-section (s) Section 75 of the Bankruptcy Act.

IV.

Because the evidence preponderantly and clearly showed that the petitioner had every reasonable probability of being able to rehabilitate himself within the three years allowed under Section 75S, without loss or injury to the moving creditor, John Hancock Mutual Life Insurance Company.

V.

Because the proceedings before the Conciliation Commissioner showed that despite the evidence quoted by the Court in rendering its decision, the debtor made a proposition of compromise, which was filed by the Conciliation Commissioner in this cause.

VI.

Because the evidence clearly showed that the debtor proposed to operate his property that within the three year period he would pay off all delinquent interest and refinance his loan, and that this proposition was made in good faith and had a reasonabl probability of success.

VII.

Because the debtor was entitled under the Act to have his property appraised and be given an opportunity to purchase same at the appraised price, and the proceedings were dismissed prematurely and before such appraisal.

WHEREFORE, this petitioner prays that said Decree be reversed and that said Circuit Court of Appeals for the Fifth Circuit enter an Order and Decree directing that said Judgment and Decree of the District Court setting aside the adjudication in bankruptcy and dismissing this proceeding be held for naught, and that this proceeding be reinstated and acted upon as under Sub-section S of Section

75 of the Bankruptcy Act and administered accordingly, and for such further orders and decrees as he may be entitled to in the premises, for all of which petitioner prays.

T. E. MOSHEIM
Attorney for Benno Bartels.

Filed 5th day of May, 1938.

ORDER ALLOWING APPEAL.

(Title Omitted).

On this the 16th day of May, A. D., 1938, came on to be considered the application of the debtor, Benno Bartels, heretofore filed, for appeal to the United States District Court of Appeals for the Fifth Circuit, and it is hereby ordered that said appeal be granted.

ROBERT J. McMILLAN
Judge, United States District Court
for the Western District of Texas.

ENTERED: Bankruptcy Minute, Volume 3, page 581.

Filed May 16, 1938.

APPEAL BOND.

(Title Omitted).

Know all men by these presents that we, Benno Bartels, as Principal, and D. D. Baker, Frank D. Quinn and Joe P. Gibbs, as Sureties, are held and firmly bound unto all parties interested in this proceeding, in the full sum of Five Hundred ($500.00) Dollars, the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, by these presents.

SEALED AND SIGNED at Seguin, Texas, this 5th day of May, A. D. 1938.

WHEREAS, heretofore, on the 5th day of April, 1938, in the United States District Court for the Western District of Texas, San Antonio Division, in the above numbered and styled cause, a Judgment was rendered granting the Motion of the creditor John Hancock Mutual Life Insurance Company and setting aside the prior Order of this Court adjudicating the debtor a bankrupt under Sub-section S of Section 75 of what is known as the Frasier-Lemke Farm Relief Act, and dismissing the debtor's petition to be adjudged such bankrupt, by reason of which said debtor feels aggrieved and desires to appeal this case to the Fifth Circuit Court of Appeals, sitting at New Orleans, Louisiana.

NOW, the condition of the above obligation is such that if said Benno Bartels shall prosecute said appeal to effect and answer all costs if he fail to make said plea good, then

the above obligation to be void, else to remain in full force and virtue.

SEALED AND DELIVERED in presence of:

BENNO BARTELS Principal
D D BAKER
FRANK D. QUINN
J. P. GIBBS
Sureties

AILEEN McKEOGH
GLORIA VELA
Witnesses

Approved by:
ROBERT J. McMILLAN
District Judge.

THE STATE OF TEXAS,)
COUNTY OF GUADALUPE.)

I, J. F. Fischer, Clerk of the District Court of Guadalupe County, Texas, do hereby certify that the signatures of the principal and sureties on the foregoing Bond are genuine, and that if said Bond were presented to me for approval, I would approve same.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 5th day of May, A. D. 1938.

J. F. FISCHER
Clerk of the District Court of Guadalupe County, Texas.

(Seal)

Filed May 16, 1938.

WAIVER OF ISSUANCE AND SERVICE OF CITATION.

(Title Omitted).

In the above styled and numbered cause, comes now L. M. Bickett, Attorney for the John Hancock Mutual Life Insurance Company, and waives the issuance and service of Citation and notice of appeal in connection with the Bankrupt Benno Bartels' application for appeal to the Honorable Circuit Court of Appeals for the Fifth Circuit at New Orleans; and said Attorney, acting for said party, further acknowledges receipt of a copy of the Praecipe filed in this cause by the Appellant, Benno Bartels, and agrees that the same contains all matters necessary to form a part of the record in this cause on appeal, save and except that there shall likewise be included in said record the Reply of the Bankrupt, Benno Bartels, to the Motion of the creditor John Hancock Mutual Life Insurance Company to dismiss the proceeding, the Order extending the time for filing the Transcript on appeal, and this Waiver and Agreement.

L. M. BICKETT
Attorney for John Hancock Mutual
Life Insurance Company.

I, T. E. Mosheim, Attorney for the Bankrupt, Benno Bartels, hereby agree that the additions to the record set forth in the foregoing Waiver shall be made to such record.

T. E. MOSHEIM
Attorney for the Bankrupt, Benno Bartels.

Filed June 20, 1938.

PRAECIPE FOR RECORD ON APPEAL.

(Title Omitted).

To the Clerk
United States District Court
San Antonio, Texas.

In re: No. 1988, In Bankruptcy
Benno Bartels.

Dear Sir:

In the above case you are requested to prepare, and have prepared a record to be transmitted to the Circuit Court of Appeals including the following:

1. Caption.
2. Decree of the Court dated December 2, 1937, appointing conciliation commissioner on application for extension and composition. (Order of reference to commissioner)
3. Report of Conciliation Commissioner showing result of meeting of December 21st, 1937.
4. Application signed by Benno Bartels under date of January 4th, 1938, to be adjudged a bankrupt under subsection S of Section 75.
5. Appointment of Alvin P. Mueller as referee per decree of court of date January 10, 1938. (Order of adjudication and reference)
6. Application of John Hancock Mutual Life Ins. Company to dismiss proceeding.
7. Reply of Bankrupt to Motion of John Hancock Mutual Life Ins. Company.
8. Such testimony as is required to be shown in the record and introduced at the last hearing. (Stenographic report of hearing before conciliation commissioner Dec. 21, 1937)

9. Statement of evidence.
10. Decree of Court, dismissing application to be adjudged bankrupt. (Order setting aside adjudication and dismissing cause)
11. Oral opinion of the Court.
12. Application for appeal.
13. Assignments of error.
14. Order allowing appeal.
15. Appeal bond.
16. Waiver of issuance and service of citation.
17. Praecipe.
18. Clerk's certificate.

Yours truly,

T. E. MOSHEIM

T. E. Mosheim, Attorney
for Benno Bartels.

Filed 2nd day of June, 1938.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF TEXAS, ss.

I, Maxey Hart, Clerk of the District Court of the United States for the Western District of Texas, do hereby certify that the foregoing on 116 pages is a true and correct copy of proceedings had and orders entered in the matter of the Motion of John Hancock Mutual Life Insurance Company, a creditor, to set aside adjudication of bankruptcy and to dismiss Debtor's petition for composition and extension, in Cause No. 1988 in Bankruptcy, styled In the Matter of Benno Bartels, Debtor, as the same appear on file and of record in this office, except that titles of documents and all endorsements thereon except dates of filing have been omitted.

I further certify that said record embraces only such pleadings, process and orders as are specified in the praecipes filed herein by appellant and appellees.

WITNESS my official signature and the Seal of said District Court, at office in the City of San Antonio, Texas, this the 6th day of July, A. D. 1938.

MAXEY HART, Clerk of said Court,

(Seal) By J. F. CAROLINE, Deputy.

[fol. 118] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 11, 1938

No. 8868

BENNO BARTELS

versus

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY et al.

On this day this cause was called, and, after argument by T. E. Mosheim, Esq., for appellant, and L. M. Bickett, Esq., for appellees, was submitted to the Court.

[fol. 119] OPINION OF THE COURT—Filed December 22, 1938

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8868

BENNO BARTELS, Appellant,

versus

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY et al., Appellees

Appeal from the District Court of the United States for the Western District of Texas

(December 22, 1938)

Before Sibley, Hutcheson and Holmes, Circuit Judges

SIBLEY, Circuit Judge:

The case concerns the proper application of Subsection (s) of Sect. 75 of the Bankruptcy Act, 11 U. S. C. A. Sect. 203(s). Benno Bartels as a farmer applied for a composition and extension of his debts and his petition was approved and referred to the Conciliator. At the creditors' meeting Bartels expressed a willingness to pay in full if

given time, and proposed to work his farm himself and to apply the proceeds of the crops to his debts, selling and paying over at once property not needed on the farm. Theretofore he had let it out on shares because he had [fol. 120] hurt his back, and poor crops had been made. He came to an agreement with his unsecured creditors but John Hancock Mutual Life Insurance Company held a mortgage on the farm for $6,000 principal, interest on which was three years in arrears, and this debt was a majority in amount of all his debts. This creditor required present payment of all arrearages, and since Bartels could not arrange cash therefore he could make no acceptable proposal. He then amended his petition and prayed to be adjudged a bankrupt under Subsection (s). On Jany. 10, 1938, he was so adjudged and the case re-referred to the Conciliator as referee. Bartels appears to have continued in possession of the farm, but under what terms does not appear. About ten weeks later the Insurance Company moved, not to have its security sold, but that the adjudication in bankruptcy be set aside and all proceedings dismissed. The bankrupt resisted this. On a hearing the judge held there was no reasonable probability of the mortgaged property being sold for enough to give the debtor any substantial equity, and that accordingly there was no reasonable probability of his financial rehabilitation. The motion was granted, the adjudication set aside and the cause dismissed, largely on the authority of our decision in Baxter vs. Savings Bank of Utica, 92 Fed. (2) 404. Other decisions from the Circuit Court of Appeals cited to support the judgment are: In Re Borgelt, 79 Fed. (2) 929, approving and affirming 10 Fed. Sup. 113; Knotts vs. First Carolinas Joint Stock Land Bank, 86 Fed. (2) 551; and Massey vs. Farmers & Merchants Bank, 94 Fed. (2) 526. Of these the first rested on two grounds, that the debtor had not made a good faith offer, and there were no assets to be administered. The second was really decided on the erroneous ground that Subsection (s) was unconstitutional. The third squarely took the position that Subsection (s) cannot be invoked unless the initial offer made to creditors has come up to certain rather vague standards which would show good faith.

[fol. 121] Confusion has arisen, we think, touching the way in which Subsection (s) fits into the scheme of bankruptcy, as to when the stay provided therein may be denied, and how security holders are to have their rights preserved.

Farmers were favored in the original Bankruptcy Act in that while they might voluntarily go into bankruptcy, they could not be forced in. This is continued in proceedings under Section 74 (l) 11 U. S. C. A. Sect. 202(l). Section 75 deals only with farmers, and as stated at its end (Subsection (s) (6)) is emergency legislation, limited originally to five years, and not to be applied where the judge finds no emergency to exist locally. The emergency was the great economic depression which in 1933 had rendered farming unprofitable, and farm lands unsalable for their normal value. To force the sale of farms under such circumstances would be a hardship on the farmer who on a basis of normal values was really solvent, and would cause those who were insolvent to lose their means of livelihood, and probably in great numbers go to swell the ranks of the unemployed and those needing public relief. The surplus value inherent in the farms would, after economic revival, accrue to speculative buyers, and aggravate the social evil of the rich becoming ever richer and the poor poorer. Creditors as a rule do not wish farms, and would under safe arrangements prefer to extend time or to compromise their debts, if it would enable their farmer debtor to continue in business and pay them. Section 75 is intended to serve all these interests while seeking mainly to help distressed farmers so far as that may rightly be done. Its benefits are expressly extended both to those who cannot meet their debts as they mature but are solvent in a bankruptcy sense, and to those who are insolvent. Subsection (c).

The applicant under Section 75 is at first not a bankrupt, but a debtor. The aid of the court is first extended to secure a voluntary adjustment with his creditors, both [fol. 122] secured and unsecured, which will enable him to continue to farm, the will of a majority in number and amount controlling the minority. If this adjustment cannot be accomplished, the farmer may wholly drop the matter, or he may turn to Subsection (s) and "amend his petition, asking to be adjudged a bankrupt." When so adjudged he becomes a bankrupt under the bankruptcy law, required to surrender his property except exemptions, and entitled to ask a discharge from his debts. But Subsection (s) introduces for a farmer who timely invokes it very important changes in the applicable bankruptcy law. Instead of immediately surrendering his property, and especially his farm and equipment, he may retain them, or so much as he requests, for three years, paying a reasonable rent for

them, and may even at the appraised value redeem them on terms fixed by the court, the redemption money then becoming part of the estate to be distributed in bankruptcy in place of the property itself. All this, as respects unsecured creditors, has been considered to be within the bankruptcy power of the federal government. But secured creditors whose liens antedate the law have as to their security vested rights which must be effectuated. The present Subsection (s) has been construed as sufficiently flexible to care for them. Wright vs. Vinton Branch Bank, 300 U. S. 440. A creditor with a mortgage on the farm may be able to force a sale which will defeat a rehabilitation of the farmer which might otherwise have been accomplished. And, although there be no secured debts, or they are not urgently pressed, rehabilitation may appear to be impracticable, or pending it the farmer may breach his obligations, and then ordinary bankruptcy procedure may be ordered to go forward as Subsection (s)(3) declares. In neither case under a proper construction of Section 75 is the entire proceeding to be dismissed. On the contrary when the rehabilitation [fol. 123] sought by Subsection (s) fails, the farmer is still a bankrupt, and his estate is to be administered and his debts discharged as in other cases of voluntary bankruptcy. "In proceedings under this Section (Section 75) except as otherwise provided therein, the jurisdiction and powers of the court, the title powers and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer, and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition asking to be adjudged a bankrupt was filed with the clerk * * *." Subsection (n). Much more is the general bankruptcy law to be applied after an adjudication as a bankrupt has been actually made under Subsection (s). The only mention of dismissing the proceedings which we find is in Subsection (l), when a composition has been carried out, or optionally when an extension proposal has been confirmed.

The courts have spoken of a lack of "good faith" in invoking Section 75 as a cause for dismissing the whole proceeding, and some countenance has been given the idea in a footnote to the opinion in the case of Wright vs. Vinton Bank, supra. We do not understand it to be a part of the court's opinion. The note mistakenly states that good faith is made

a requirement of the initiation of a proceeding under Sect. 75. That requirement appears in Sect. 74(a). Section 75 nowhere mentions initial "good faith" as a prerequisite to invoking Subsection (s), or going through bankruptcy if rehabilitation under that Subsection fails. The good faith of the offer and acceptance is to be enquired into by the court before confirming a composition or extension accepted by the majority of creditors, Subsection (i), and that is the only mention of good faith in Sect. 75. If the farmer is desirous of continuing to farm and is willing to give his creditors [fol. 124] their full rights in his property as the law fixes them hoping to obtain from them such extension or compromise as will enable him to work out, that we think is all the good faith necessary. That he has no equity in his property but is actually insolvent is no bar. The statute says so in Subsection (c). That his creditors refuse to compromise or give time so as to enable him to farm, merely gives him the right to proceed in bankruptcy under Subsection (s) and thus to try conclusions with the judge. That Bartels in this case had no plan to present to his creditors except to offer to go to work personally on the farm with his grown son, and apply presently to his secured debt what he could raise by selling some mercantile property and vacant lots, hoping to pay all in full finally, does not require the dismissal of his proceedings. His unsecured creditors were actually content to adopt the plan. The secured creditor whose debt was a majority in amount was not content. Bartels thereupon rightly asked adjudication as a bankrupt, invoking Subsection (s). His secured creditor had the right thereafter to ask the court for a sale or other disposition of the security, if the delay and rentals fixed under Subsection (s) would impair his vested rights. This he did not do. He had no right to set aside the adjudication and dismiss the proceeding. If there is no substantial equity, actual or potential, above the mortgage debt reasonably to be saved, a sale of the farm may be ordered, defeating of course rehabilitation, but the adjudication would stand and administration in bankruptcy continue. It was error in this case to set aside the adjudication and dismiss the proceedings.

What we said about Subsection (s) in Dallas Land Bank vs. Davis, 83 Fed. (2) 322, we see no occasion to modify. In Baxter vs. Savings Bank of Utica, 92 F. (2) 404, the disposition of the case was correct, but some of the language touching initial good faith as a prerequisite to invoking Subsec-

[fol. 125] tion (s) and indicating that the adjudication under Subsection (s) should have been set aside to make way for another adjudication we now think was inaccurate. The adjudication under Subsection (s) is good if the farmer never makes any application to retain possession of his property and for its appraisal and a stay of all other proceedings. The language of the statute shows that such application is optional, and the option may be lost by failure to assert it at the times the statute names. "Such farmer may, at the same time, or at the time of the first hearing, petition the court that all his property * * * be appraised, etc." If no such petition is made, or if later the benefits of possession and stay are defeated, the adjudication stands as a voluntary adjudication in bankruptcy. Appropriate proceedings ought to follow.

The judgment rendered on the motion of the Insurance Company is reversed and the case ordered reinstated for further proceedings not inconsistent with this opinion.

HOLMES, Circuit Judge, dissenting:

The district court found that there was no reasonable hope of appellant rehabilitating himself with the property involved in this estate, and that the petition was not filed in good faith. The record amply supports this finding, and the majority opinion does not question it. Nevertheless, the majority opinion holds that the court was without power to dismiss the proceedings.

In sustaining the constitutionality of the act, the Supreme Court held that the proceeding could be maintained only as a [fol. 126] bona fide effort on the part of the debtor to rehabilitate himself, and that this was without regard to any provision of the act specifically requiring good faith. In a footnote to its opinion, it says: "Relief under Sec. 75 (s) may be obtained only by one who has made a bona fide attempt, and has failed, to effect a composition under Sec. 75 (a) (r)." Wright v. Vinton Branch, 300 U. S. 440, 462. It further states that the proceedings will be halted at the outset if the debtor is beyond hope of rehabilitation. Such a pronouncement, when made the basis for a holding that an enforced delay in favor of one class of litigants for a period of three years does not violate the due-process clause of the Constitution, should not be disregarded.

Good faith has been defined as lack of pretense. A proceeding such as this, without hope of rehabilitation, is a mere pretense. The majority says that, because there is a

field of judicial action within which the court may move and act, the power to withhold its process in aid of a pretense is denied to it, and that, as a mere ministerial funtionary, it must proceed only upon such motions and petitions as are expressly provided for in the act. This is not within the usual concept of a judicial tribunal. The Supreme Court held otherwise, and pointed out that the practical administration of the section in the lower courts already gave ample evidence of substantial protection to creditors. For these reasons, I think the judgment of the district court should be affirmed.

The decision of this case is unfortunate in view of our decision in John Beverly Henderson, Debtor, No. 8758, this day decided. The two cases were submitted at the same term of court and were considered together; but, owing [fol. 127] to the fact that exactly the same judges did not sit in both cases, a different result is reached.

[fol. 128] JUDGMENT

Extract from the Minutes of December 22, 1938

No. 8868

BENNO BARTELS

versus

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court rendered on the motion of the Insurance Company in this cause be, and the same is hereby, reversed and the case ordered reinstated for further proceedings not inconsistent with the opinion of this Court;

It is further ordered, adjudged and decreed that the appellee, John Hancock Mutual Life Insurance Company, be condemned, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Holmes, Circuit Judge, dissenting."

[fols. 129-136] PETITION OF APPELLEE, JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY FOR REHEARING—Filed January 9, 1939

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT.

No. 8868

BENNO BARTELS, APPELLANT,

versus

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, *et al.*, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION.

PETITION OF APPELLEE, JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, FOR REHEARING.

Now comes John Hancock Mutual Life Insurance Company, appellee in the above numbered and entitled cause, and petitions the court to grant it a rehearing in this cause and, upon such rehearing, to set aside the judgment and opinion of this court heretofore rendered herein on December 22, 1938, whereby the judgment of the District Court was reversed; and, as grounds for this petition for rehearing, appellee respectfully represents to the court:

—2—

FIRST GROUND.

The court erred in its decision and judgment in this case, whereby the judgment of the District Court, dismissing the debtor's petition and all proceedings thereunder, was reversed and the case was ordered reinstated for further proceedings, because such decision and judgment is in direct conflict with the holding of the Supreme Court of the United States in the case of *Wright vs. Vinton Branch Bank*, 300 U. S. 440, 462, 81 L. ed. 736, 743, wherein the Supreme Court of the United States has distinctly held: (1) that "Relief under Section 75 (s), (Bankruptcy Act as amended, 11 U. S. C. A., Sec. 203 [s]), may be obtained only by one who has made a bona fide attempt, and has failed, to effect a composition under Section 75 (a)-(r). (Bankruptcy Act as amended)"; (2) that a debtor's proceeding under Section 75 of the Bankruptcy Act will be halted at the outset" if the debtor is beyond all reasonable hope of financial rehabilitation; and (3) that, without regard to any provision of the Act, (Section 75 of the Bankruptcy Act, 11 U. S. C. A.), or any specific requirement that the debtor's petition be made in good faith, nevertheless, good faith on the part of the petitioning debtor was required.

Statement.

The majority opinion of this court in this cause holds that the language of Justice Brandeis of the Supreme Court of the United States, appearing in the footnote to the opinion of the court delivered by him in the case of *Wright vs. Vinton Branch Bank, supra,* constitutes no part of the opinion of the Supreme Court in that case, and, thereupon, the majority declined to follow such language. In the dissenting opinion in this case by Circuit Judge Holmes, it is recognized that the language in the footnote of Justice

Brandeis in *Wright vs. Vinton Branch Bank, supra,* does constitute a controlling part of the opinion of the Supreme Court in that case. And the majority opinion in this case is directly in conflict with the holding of the Supreme Court of the United States in the case of *Wright vs. Vinton Branch Bank, supra,* in the three respects pointed out in the foregoing "First Ground" of this petition for rehearing

SECOND GROUND.

The court erred in its decision and judgment in this case in overruling and rejecting the holding previously made by it in the case of *Baxter vs. Savings Bank of Utica,* 92 F. (2d) 404, in which case this court had said:

> "It has been pointed out that good faith in this connection means more than the absence of actual fraud. A bona fide effort to compromise with creditors is made a prerequisite to the relief afforded under subsection (s). * * * The primary purpose of Section 75 is the composition and extension of the debts of distressed farmers. The function of subsection (s) is to provide temporary relief to those who might be able to adjust their difficulties but have failed in the preliminary proceeding. Its presence in the Act has the additional effect of providing an inducement to secured creditors to accept a feasible plan when offered. Thus, its presence in the Act is in aid of the composition provisions, resort to which is made a prerequisite to the relief afforded. It may not be treated as an end in itself, with the other proceedings as mere procedural steps to be taken toward the relief there afforded. It follows that the offer of composition or extension was not made in good faith."

STATEMENT.

It is plainly shown, by the majority opinion in this case, written by Circuit Judge Sibley, that the decision in this case is in conflict with the *Baxter case, supra,* and that the court now, in effect, overrules the decision previously rendered by it in the *Baxter case,* because it is said in the majority opinion, with respect to the *Baxter case,* "some of the language touching initial good faith as a prerequisite to invoking subsection (s) and indicating that the adjudication under subsection (s) should have been set aside to make way for another adjudication, we now think was inaccurate." And, in order to make the rejection of the holding in the *Baxter case, supra,* unmistakable, in the dissenting opinion of Circuit Judge Hutcheson in the case of *John Beverly Henderson, Debtor,* No. 8758, decided on the same day as this case, it is said: "In *Bartels vs. John Hancock Mutual Life Insurance Company* this day decided, the majority is disapproving the holding in the *Baxter case,* that the right of a farmer to ask that he be adjudged a bankrupt under subsection (s) is qualified by, indeed is dependent upon, whether his proposition for a composition under preceding subsections is deemed to have been made in good faith." Thus, the conflict between the decision in this case and the prior decision of this court in the *Baxter case* is apparent.

THIRD GROUND.

The court erred in rendering its decision and judgment in this case, whereby the judgment of the District Court was reversed, because such decision is in direct conflict with the decision rendered by this Honorable Court on the same day in the case of *John Beverly Henderson, Debtor,* No. 8758, on the docket of this court, in which case the

majority follows and adheres to a previous decision of this court in the case of *Baxter vs. Savings Bank of Utica*, 92 F. (2d) 402.

STATEMENT.

It is apparent, from the opinions delivered in this, the *Bartels* case, and in the *John Beverly Henderson* case, both decided by this court on the same day, that the two decisions are in direct and irreconsilable conflict. Indeed, the court recognizes that fact, as is shown, upon the one hand, by the dissenting opinion of Circuit Judge Holmes in this, the *Bartels* case, and, on the other hand, by the dissenting opinion of Circuit Judge Hutcheson in the *John Beverly Henderson* case.

FOURTH GROUND.

The court erred in its decision and judgment reversing the judgment of the District Court, which dismissed the debtor's petition and proceedings thereunder, because the decision of a majority of the court has misconstrued and misapplied Section 75 (s) of the Bankruptcy Act as amended, (11 U. S. C. A. Section 203 [s]), in that the court's construction, interpretation, and application of said statute is in conflict with a prior construction, interpretation, and application of said statute as made by the Supreme Court of the United States in the case of *Wright vs. Vinton Branch Bank*, 300 U. S. 440, 462, 81 L. ed. 736, 743.

FIFTH GROUND.

The court erred in its decision, whereby the judgment of the District Court dismissing the debtor's petition and all proceedings thereunder was reversed, because the court thereby misconstrued, misinterpreted, and misapplied Sec-

tion 75 (s) of the Bankruptcy Act as amended, (11 U. S. C. A. 203 [s]), so as to deny to this appellee, John Hancock Mutual Life Insurance Company, due process of law and to deprive it of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that appellant will be postponed and delayed, to its detriment and loss, in the enforcement of its debt and lien where, according to the unrejected findings of the trial court, the debtor had no equity in his farm, the debtor's petition was not filed in good faith in a bona fide effort to obtain a composition and extension of his debts, and there was no reasonable hope of the debtor's financial rehabilitation.

STATEMENT.

As said by Circuit Judge Holmes, in his dissenting opinion in this case, the majority opinion does not reject the findings of the District Court to the effect: (1) that the debtor had no equity in the farm; (2) that the debtor's petition was not filed in a good faith, bona fide effort at composition; and (3) that the debtor's financial condition was beyond hope of rehabilitation.

SIXTH GROUND.

The court erred in reversing this case, because the District Court found that the debtor had no equity in the farm, that his petition was not filed in good faith, and that there was no reasonable hope of his financial rehabilitation, and those findings are not questioned, criticised, or rejected by this court, by reason whereof this court has erroneously failed to give effect to the fact findings of the District Court which are amply supported by evidence in the record.

STATEMENT.

See the findings of the District Court, pages 99-108, Transcript of Record.

WHEREFORE, appellee, John Hancock Mutual Life Insurance Company, prays that this its petition for rehearing be granted and, upon such rehearing, that the court set aside its decision and judgment heretofore rendered herein on December 22, 1938, and that the judgment of the District Court, dismissing the debtor's petition and all proceedings thereunder, be in all things sustained and affirmed.

Respectfully submitted,

L. M. BICKETT,

San Antonio, Texas,

Attorney for Appellee, John Hancock Mutual Life Insurance Company.

I, L. M. BICKETT, do certify that I have read the foregoing petition for rehearing; that to the best of my knowledge, information, and belief there is good ground to support said petition; and that it is not interposed for delay.

Witness my personal signature this 6th day of January, A. D., 1939.

.....

Attorney of record for appellee, John Hancock Mutual Life Insurance Company.

The attorney of record for appellant in this cause is T. E. Mosheim, Esquire, of Seguin, Texas, to whom a copy of this petition for rehearing has been furnished.

[fol. 137] DISSENTING OPINION OF HONORABLE EDWIN R. HOLMES, CIRCUIT JUDGE, TO DENIAL OF PETITION FOR REHEARING—Filed January 23, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8868

BENNO BARTELS, Appellant,

versus

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, et al., Appellees

Appeal from the District Court of the United States for the Western District of Texas

(January 23, 1939)

Before Sibley, Hutcheson and Holmes, Circuit Judges

BY THE COURT:

It is Ordered that the petition for rehearing in the above numbered and entitled cause be, and it is hereby,

Denied.

Holmes, Circuit Judge, dissents.

HOLMES, Circuit Judge, dissenting:

I think the petition should be granted. The point of dis-[fol. 138] agreement between us is not whether appellant is entitled to be adjudged a bankrupt. That was decided in Baxter v. Savings Bank of Utica, 92 F. (2d) 404, which apparently is approved by three of the five judges of this circuit, and which is in accord with Massey v. Farmers & Merchants National Bank & Trust Company, 94 F. (2d) 526, wherein certiorari was applied for by eminent counsel, and the application was afterward withdrawn prior to a ruling thereon by the Supreme Court. 303 U. S. 665.

The real question at issue in this case is whether appellant is entitled to petition the court to allow him to retain possession of his property for a period of three years, during which

it shall stay all judicial proceedings in any court, or under the direction of any official, against the debtor or any of his property; and whether he is entitled to invoke the other jurisdictional provisions of Section 75(s) of the Bankruptcy Act.

No one denies that a farmer may become a voluntary bankrupt or that he may not be forced to become an involuntary one. Appellant has not petitioned for an adjudication as an ordinary bankrupt. There is nothing in the evidence to indicate that he desires any status in the bankruptcy court except that provided by subsection (s). If he does, no one may object, but he should not be entrapped, when he is seeking special relief under emergency legislation. This was the effect of our holding in the Baxter case, in which no application for certiorari was made.

The question is, shall a debtor who prays for the beneficent provisions of subsection (s) be dealt with, under Section 22 of the Act, as an ordinary voluntary bankrupt? The majority opinion says: "If there is no substantial equity, actual or potential, above the mortgage debt reasonably to be saved, a sale of the farm may be ordered, defeating of course rehabilitation, but the adjudication would [fol. 139] stand and administration in bankruptcy continue"; but it does not say whether the administration should continue under subsection (s) or as in ordinary bankruptcy. The distinction is important, as will appear from the legal requirements of administration.

It is fundamental that adjudication fixes the status both of the bankrupt and of his property as of the date when the petition for adjudication was filed. An ordinary adjudication divests rights of the bankrupt and fixes rights of creditors, but under subsection (s), it leaves the substantive rights of bankrupt and creditors unimpaired, and provides a procedure for the enforcement of both. The distinction between the latter procedure and that in ordinary bankruptcy is, from the debtor's point of view, very marked. When the petition is not filed in good faith, fairness, as well as the statute, requires the proceedings to be dismissed, rather than to hold the petitioner as an ordinary bankrupt, and, denying a stay, to sell his property without any equity of redemption. Sheets v. Livy, 99 F. (2d) 917.

Recurring to the real question at issue, the majority opinion says that Section 75 nowhere mentions initial good faith as a prerequisite to invoking subsection (s). As to

this, the note to Wright v. Vinton Branch, 300 U. S. at page 462, seems to me to be ample authority. It elaborates upon the construction of the act in the body of the opinion. Apparently the note has the full sanction of the court, and, in addition to what I have previously quoted, it says: "It must be assumed that the situation of the present debtor was not beyond all reasonable hope of rehabilitation, else he could not have qualified to file his petition in the outset." That is, he could not have filed his original petition, amended under subsection (s).

The holding which seems to me to be clearly untenable is that an amendment, not of the averments but of the [fol. 140] prayer of the petition, supplies a constituent element essential to confer the additional jurisdiction for relief of debtors which was the primary object of the original petition. Having made good faith essential to the filing of the original petition, it was unnecessary to repeat the requirement in the provision for the amendment. Referring to the petition, an amendment of which is the subject of our disagreement, the statute provides as follows: "Upon the filing of such a petition or answer the judge shall enter an order approving it as properly filed under this section, if satisfied that such petition or answer complies with this section and has been filed in good faith, or dismissing it." 11 U. S. C. A. 202(a).

The above quoted sentence is from section 74(a), which applies to any person, except a corporation, seeking a composition or extension of his debts. Appellant is a person and not a corporation; therefore, it includes him; but he belongs to a particular class of persons, which is further dealt with in section 75. He is a farmer, and when the latter seeks a composition or extension of his debts, additional jurisdiction is conferred on the bankruptcy court, but the general requirement that the petition must be filed in good faith is not relaxed. This is put beyond doubt by subsection (i) which provides: "The court shall confirm the proposal if satisfied that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it is for the best interests of all creditors; and (3) the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. In applications for extensions the court shall require proof from each creditor filing a claim that such claim

is free from usury as defined by the laws of the place where the debt is contracted."

[fol. 141] When these statutory provisions are rounded out by the constitutional construction of section 75(s) in Wright v. Vinton Branch, supra, and particularly by note 6 to the opinion of the court in that case, the court below was fully warranted in its dismissal of the proceeding, because there was no hope of rehabilitation and the amended petition was not filed in good faith.

Merely as a person, a farmer may file a petition under section 74, seeking a composition or extension of his debts; he may amend it by alleging that he is a farmer and bring the proceeding within the additional jurisdiction granted under section 75; and, failing to reach an agreement with his creditors, he may amend the prayer of his petition and ask to be adjudged a bankrupt under section 75(s), wherein still further powers are given to the bankruptcy court. The statute declares that these are grants of jurisdiction in addition to those theretofore possessed by the bankruptcy courts. 11 U. S. C. A. 201 (Section 73). The judicial power of the United States having the capacity to receive this jurisdiction from the Congress, the bankruptcy courts may exercise it if a person of the class designated seeks to invoke it by proper petition filed in good faith.

No good faith is required in ordinary bankruptcy; the debtor's unexempt property is vested in a trustee for the benefit of his creditors; he is discharged from his provable debts; and nothing further is expected of him with respect to his former indebtedness; but sections 74 and 75 are intended to compose the debts and rehabilitate the debtor, either with or without an adjudication. In the latter instance, in the absence of good faith or the hope of rehabilitation, the proceeding is futile, and the law will not do an idle thing, especially since it will not help the debtor, and will hinder or delay the creditors. Sections 73, 74, and [fol. 142] 75 are in one act, were passed at the same time (47 Stat. 1467), and should be construed together as the Congress was dealing with the whole subject at the same time, as indicated in 75(r) which includes section 74 in its definition of a farmer.

The status of the debtor is not changed upon the amendment of his petition and his adjudication in bankruptcy under section 75(s). This is shown by section 75(n), which provides that upon the filing of the petition the debtor-

farmer subjects himself and his property to the exclusive jurisdiction of the court, and that such jurisdiction shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition or answer was filed. Therefore, the filing of the amended petition asking to be adjudged a bankrupt did not take away the power of the court to dismiss the petition (if not filed in good faith) expressly granted under section 74(a) and impliedly brought forward into section 75 by paragraph (i) of the latter section.

Notice to creditors is not necessary before dismissal of the original or amended petition. The statute does not require it, because the jurisdiction being exercised is primarily for the relief of debtors. Herein is another difference between the two procedures. The procedure in ordinary bankruptcy, where the rights of creditors are considered first, is incompatible in many respects with the beneficent procedure in recent legislation accorded distressed debtors. The basis for a contrary view may be found in the contention that, while the court might have dismissed the original petition herein without notice to creditors, it did not do so, but approved the same, and that the order of approval is res judicata. This contention readily gives way upon examination. First, the approval was upon the ex parte application of appellant, who did [fol. 143] not file the petition or amendment thereto in good faith and may not complain of its dismissal. Second, no one was prejudiced by the dismissal, not even appellant, because, in the absence of good faith or hope of rehabilitation, he is not entitled to a stay, or to retention of possession of his property after adjudication, or to an equity of redemption after a sale thereof, or to the other benefits of the liberal legislation intended for the relief of debtors in an economic emergency. Third, the bankruptcy court is always open; it has no terms fixed by law, and may review an order of this kind at any time before the proceeding is finally closed.

We have seen that every individual seeking a composition with creditors must file a petition in good faith or the court has power to dismiss it, and should do so under section 74 (a), without notice to creditors. What reason can be urged for exempting a farmer from this requirement? Upon what principle of justice should a farmer

who has no hope of rehabilitation be permitted to delay or hinder creditors with a sham proceeding for composition or extension of his debts? Good faith and hope of rehabilitation are not unusual requirements, and it is inconceivable that the Congress intended a discrimination in this respect when it was dealing with farmers and other individuals at the same time and in the same act: H. R. No. 14,359, for the relief of debtors. 47 Stat. 1467. Therefore, the only reasonable construction of the act is that a farmer is a person entitled to file a petition under either section 74 or 75; and a petition under either section may be dismissed for lack of good faith. This view is confirmed by subsection (i) of section 75, which requires confirmation of the proposal by the court if "the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden." This statute itself is enough to show the intent of Congress, even if a farmer is not a person [fol. 144] entitled to file a petition under section 74 (a) which may be dismissed by the court, for want of good faith, without notice to creditors.

Since the appellant has given no indication of a desire to become an ordinary bankrupt, and since the ruling of the majority is that neither good faith nor hope of rehabilitation is essential to an adjudication upon the amended petition, which entitles him to invoke the court's emergency jurisdiction intended especially for the relief of debtors, I dissent, with deference, from the order overruling the petition for a rehearing.

[fol. 145] ORDER DENYING REHEARING

Extract from the Minutes of January 23, 1939

No. 8868

BENNO BARTELS

versus

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Holmes, Circuit Judge, dissents."

[fol. 146] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 118 to 145 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8868, wherein Benno Bartels is appellant and John Hancock Mutual Life Insurance Company, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 117 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 23rd day of March, A. D. 1939.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 24, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.